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TWENTY-FOURTH REPORT OF THE JUDICIAL COUNCIL OF MASSACHUSETTS

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No. 144

TWENTY-FOURTH REPORT
Judicial Council of Massachusetts
For the Year 1948

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The Commonwealth of Massachusetts

JANUARY, 1949

TO HIS EXCELLENCY, PAUL A. DEVER

Governor of Massachusetts.

In accordance with the provisions of section 34B of chapter 221 of the General Laws (Ter. Ed.) we have the honor to transmit the twenty-fourth annual report of the Judicial Council for the year 1948.

FRANK J. DONAHUE, *Chairman.*
SAMUEL P. SEARS, *Vice-Chairman,*
LOUIS S. COX,
JOHN E. FENTON,
JOHN C. LEGGAT,
DAVIS B. KENISTON,
FRANK L. RILEY,
FREDERICK J. MULDOON,
WILFRED J. PAQUET,
REUBEN L. LURIE.

ACTS OF 1924, CHAPTER 244

As amended by St. 1927, c. 923, St. 1930, c. 142, and St. 1947, c. 601

Now appearing as G. L. (Ter. Ed.) Ch. 221, §§ 34A-34C

AN ACT PROVIDING FOR THE ESTABLISHMENT OF A JUDICIAL COUNCIL TO MAKE A CONTINUOUS STUDY OF THE ORGANIZATION, PROCEDURE AND PRACTICE OF THE COURTS.

Be it enacted, etc., as follows:

Chapter two hundred and twenty-one of the General Laws is hereby amended by inserting after section thirty-four, under the heading "Judicial Council," the following three new sections—*Section 34A.* There shall be a judicial council for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the commonwealth, the work accomplished, and the results produced by that system and its various parts. Said council shall be composed of the chief justice of the supreme judicial court or some other justice or former justice of that court appointed from time to time by him; the chief justice of the superior court or some other justice or former justice of that court appointed from time to time by him; the judge of the land court or some other judge or former judge of that court appointed from time to time by him; the chief justice of the municipal court of the city of Boston or some other justice or former justice of that court appointed from time to time by him; one judge of a probate court in the commonwealth and one justice of a district court in the commonwealth and not more than four members of the bar all to be appointed by the governor, with the advice and consent of the executive council. The appointments by the governor shall be for such periods, not exceeding four years, as he shall determine.

Section 34B. The judicial council shall report annually on or before December first to the governor upon the work of the various branches of the judicial system. Said council may also from time to time submit for the consideration of the justices of the various courts such suggestions in regard to rules of practice and procedure as it may deem advisable.

Section 34C. No member of said council, except as hereinafter provided, shall receive any compensation for his services, but said council and the several members thereof shall be allowed from the state treasury out of any appropriation made for the purpose such expenses for clerical and other services, travel and incidentals as the governor and council shall approve. The secretary of said council, whether or not a member thereof, shall receive from the commonwealth a salary of five thousand dollars.

MEMBERS OF THE COUNCIL

FRANK J. DONAHUE of Boston, *Chairman*
SAMUEL P. SEARS of Newton, *Vice Chairman*

LOUIS S. COX of Lawrence
JOHN E. FENTON of Lawrence
JOHN C. LEGGAT of Lowell
DAVIS B. KENISTON of Boston
FRANK L. RILEY of Worcester
FREDERIC J MULDOON of Winthrop
WILFRED J. PAQUET of Watertown
REUBEN L. LURIE of Brookline

FRANK W. GRINNELL, *Secretary*, 60 State St., Boston

TWENTY-FOURTH REPORT OF THE JUDICIAL COUNCIL OF MASSACHUSETTS

To His Excellency

PAUL A. DEVER

Governor of Massachusetts

The Judicial Council was created by St. 1924, Chapter 244 (*See copy printed on opposite page*), "for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the Commonwealth, the work accomplished and the results produced by that system and its various parts."

Since the last report Hon. John C. Leggat of the Middlesex County Probate Court, Hon. Frank L. Riley of the Central District Court of Worcester and Frederic J. Muldoon of Winthrop were reappointed by Governor Bradford, as members of the Council for four year terms.

RECOMMENDATIONS ADOPTED IN 1948

During the last session of the Legislature the following recommendations were adopted, in addition to five negative recommendations on matters referred to the Council by the Legislature which were followed. The recommendations adopted appear in the statute book for 1948 as: —

Chapter 274 relative to the statute of limitations in actions of tort.

Chapter 309 relative to the suspension of the execution or operation of decrees of the Superior Court pending appeals.

Chapter 354 relative to notices by registers of probate to the Attorney General of the creation or increasing of charitable trust funds.

Chapter 279 regulating notification to District Attorneys of facts relating to alleged adultery in divorce proceedings.

In 1925, the legislature also submitted the following request to the council.

1925 RESOLVES, CHAPTER 27

"Resolved, That the judicial council is hereby requested to investigate ways and means for expediting the trial of cases and relieving congestion in the dockets of the Superior Court, and, among other things . . . ways and means for encouraging, so far as consistent with constitutional rights, trials without jury . . . and any other ways and means that may appear feasible to said council for improving and modernizing court procedure and practice so that, consistently with the ends of justice, the proverbial delays of the law and attendant expense, both to litigants and the general public, may be minimized. (Approved April 24, 1925)."

Changes in Probate Court Forms Ordered by the Supreme Judicial Court Following Recommendations of the Council

Following a recommendation in the 22nd Report of the Council (page 28) and again in the 23rd Report (page 14) the Supreme Judicial Court has ordered that the following form for notice now in use in the Probate Courts, namely probate of will with sureties, probate of will without sureties, and administration with the will annexed, be amended in each case by striking out from the order "all known persons interested in the estate" and substituting "all known heirs at law of the deceased and all known legatees and devisees named in said instrument."

Also following the suggestion of the Council in the 23rd Report (pages 42–45), the court directed a change in the form of a libel for divorce to make that form consistant with the opinions of the court on the subject.

These changes in the forms (in effect September 1, 1948) were made by the court in accordance with section 30 of Chapter 215 of the General Laws.

Bills Recommended but Not Adopted

The 23rd Report contained a somewhat extended discussion of the rising public cost of the administration of justice with a number of recommendations for moderate increases in fees or the establishment of new fees for various steps in the course of litigation in order to lessen to some extent the burden of expense carried by the public for the benefit of the small minority who are concerned in litigation. This subject had been discussed in some of the earlier reports of the Council beginning in 1926 and, in more recent years, by the Ways and Means committee of the Legislature but, with few exceptions, no legislation resulted. The subject is again still more fully discussed in this report with detailed reports of costs obtained from the county treasurers. In view of the large total of public expense thus shown, which has been constantly increasing, we call special attention to that part of this report as deserving consideration at a time when the problem of the cost of government in all directions is under constant study.

In the 23rd Report (pages 33–36) we recommended the establishment of jury commissioners for the selection of jurors in a district comprising the counties of Norfolk, Middlesex and Suffolk. The reasons for the recommendation were stated in that report and also in the 9th Report of the Judicial Council in 1934, as well as in the report of the so-called "Crime Commission" in 1934 and in the report of a special committee of the bar in 1935.

This subject is again discussed in this report with certain changes in the draft of the bill submitted, particularly in the provisions for the payment of the commissioners and the apportionment of the cost among the three counties mentioned. The long and successful experience with jury commissioners in Ohio and elsewhere suggests the advisability of the consideration of the subject here.

A bill relative to the service of process on non-resident individuals doing business in Massachusetts was recommended but not adopted and the recommendation is again renewed in this report.

The draft of an act relative to the disqualification of judges was recommended in the 23rd Report on page 42, and certain changes of detail as to administrative authority in certain courts were also suggested in that report for reasons stated on pages 47–49, but were not adopted.

The Rising Cost of the Administration of Justice and Its Relation to Court Fees

In our 23d Report, in 1947, we discussed, at some length, the rising cost of the courts and pointed out that, in spite of the increase in cost, with few exceptions, there has been no increase in court fees, especially in the Superior Court, since 1884. This study of the relation of public cost to court fees began in the second report of the Council in 1926 and was discussed, at intervals, in subsequent reports with suggestions for moderate increases in certain fees in order to reduce, to some extent, the burden on the public, especially through the county treasuries. We pointed out that the people are taxed for a very large and increasing expense to enable a very small proportion of the population to litigate in the courts, frequently in the most expensive way for the public. We suggested moderate increases in the fees for various forms of litigation in different courts. We called attention to the fact that the Ways and Means Committee of the legislature, in 1943, in a report numbered House 1295 of that year, also made suggestions of this kind. We quoted the following passage from the 19th Report of the Judicial Council in 1943 (page 34).

> "Statistical tables are not attractive to most of us, but they sometimes help greatly in understanding in spite of the time-honored jokes about 'statisticians.' The statistical tables, compiled under the supervision of the Council from the annual records of the Superior Court, in 1928 and 1929 in the fourth and fifth reports, showed the high public cost of jury trials as compared with verdicts and indicated that it might be cheaper for the public if it could pay all the verdicts instead of paying for the process of reaching them. The facts shown helped materially in the movement which resulted in various successful experiments in reducing delay and congestion. In the same way the generally neglected tables in the annual reports of the Council, and especially tables 1 and 2, and 6 and 11

showing annual entries and thousands of cases on the dockets until they are finally disposed of without trial, many of them for lack of prosecution, maybe helpful now in considering the suggestions of the Ways and Means Committee."

We also pointed out that the financial arrangements between the counties and the Commonwealth in regard to the payment of the cost of administering justice "obscure the rising cost to the public and make it more difficult to see the whole problem in sound perspective and to realize the full extent to which the public "pays through the nose" to provide the Constitutional opportunities for the small minority engaging in litigation."

This year we have made a further study of this business aspect of the administration of justice and have secured from the various county treasurers and other scattered sources of information in printed documents, tabulated items of cost showing the following figures. With the present scattered and variable methods of accounting, more accurate totals are not readily ascertainable. If they were, it seems probable that the overall total would be larger. The figures given below add up to an approximate total of more than $13,000,000 payable by the taxpayers through the county treasuries and the treasury of the commonwealth.

Cost to Counties of Superior Court

At the request of the Council, each County treasurer filled out the table on the *opposite* page. The reports showed the following totals *which do not include the salaries and travel expenses of the 32 justices. Those are paid by the commonwealth.*

Approximate Total Cost of Superior Court to the Counties in 1947

Barnstable	$26 153.56
Berkshire	26,947.22
Bristol	170,522.46
Dukes	5,885.82
Essex	197,153.77
Franklin	25,450.45
Hampden	164,501.24
Hampshire	31,076.04
Norfolk	118,164.05
Plymouth	174,425.91
Middlesex	444,827.31
Nantucket	2,214.59
Suffolk	1,247,518.40
Worcester	237,958.24
	$2,845,851.84
Expense for Auditors and Masters in 1947 (See Appendix C, p. 000 of this report)	36,894.13
Total	$2,882,745.97

FORM OF REPORT FOR . . . COUNTY

For year ending December 31, 1947

EXPENDITURES INCIDENTAL TO SITTINGS OF THE SUPERIOR COURT FOR *Civil* BUSINESS IN SAID COUNTY

Stenographers .....
Juries .....
Court Officers .....
Constables (serving venires) .....
Clergymen (opening court) .....
Meals for juries .....
Miscellaneous .....
Estimated ¾ cost of office of clerk of courts .....
Total .....
Receipts from entry fees .....
Balance of expense to county .....

To these figures there must be added:

EXPENDITURES INCIDENTAL TO SITTINGS OF THE SUPERIOR COURT FOR *Criminal* BUSINESS IN SAID COUNTY

Probation Office .....
Transportation and commitment of prisoners; capiases, subpoenas, warrants and writs .....
Expert testimony and professional services .....
Office of District Attorney .....
Witnesses .....
Separate Grand Jurors .....
Traverse Jurors .....
Court Officers .....
Constables (serving venires) .....
Clergymen (opening court) .....
Meals for juries .....
Extradition .....
Stenographers .....
Miscellaneous .....
Estimated ¼ cost of office of clerk of courts .....
Total .....
Add balance expense of civil business .....
Add estimated additional cost of heat, light, cleaning, painting, plumbing, carpentry, and repairs generally .....
Making approximate total for Superior Court in . . . County .....

Cost to Counties of District Courts

The following table shows the approximate cost in each county of the District Courts, including the salaries of the justices which are paid through the county treasuries although the district courts are state courts.

The column of appropriations is taken from chapter 503 of the Acts of 1948 authorizing the appropriations (for counties other than Suffolk and Nantucket) granting a county tax and specifying the items to be covered by the tax. The column of estimated receipts submitted by county Commissioners (in counties other than Suffolk and Nantucket) and tabulated by the director of accounts, is taken from House Document 1850 of 1948. The details of the expenses for each of the courts for 1947 (which provided the background for estimates and appropriations for 1948) appear in the reports of the various county treasurers printed in accordance with G.L., chapter 35, Section 25–27. The figures for Suffolk appear below in a separate table. As the printed report for Nantucket does not give the separated cost of the District Court the cost for 1932 as stated in the 10th Report of the Judicial Council (at p. 87) is used in the right hand column as an approximate figure sufficient for the purpose of showing *approximate* total cost in thirteen counties.

		Estimated County revenue from District Courts of 1948	*County Appropriations authorized for 1948*
Barnstable	2 district courts	$7,500.00	$31,683.26
Berkshire	6 district courts	6,000.00	61,734.00
Bristol	4 district courts	40,000.00	144,700.00
Dukes	1 district court	600.00	7,455.00
Essex	9 district courts 5 trial justices	56,500.00	255,220.00
Franklin	2 district courts	5,000.00	23,860.00
Hampden	5 district courts 1 trial justice	75,000.00	189,500.00
Hampshire	2 district courts	12,500.00	36,000.00
Middlesex	12 district courts 2 trial justices	110,000.00	509,570.00
Nantucket	1 district court (1932 cost see above)		3,549.00
Norfolk	5 district courts	35,000.00	197,150.00
Plymouth	4 district courts	20,000.00	105,130.00
Worcester	11 district courts 2 trial justices	40,000.00	259,950.00
Total		$428,100.00	$1,925,501.26 428,100.00
Approximate net cost to 13 counties			$1,497,401.26

Suffolk County District Courts and Boston Juvenile Court

As Suffolk County is not included in the Appropriations act the following figures were obtained from the City Auditor of Boston, showing the estimated receipts and expenses including judicial and other salaries:

	1947 Receipts	1948 Estimated Receipts	1947 Expenses	1948 Appropriation
Municipal Court of the City of Boston	$122,952.50	172,500	$586,366.03	$616,708.74
Brighton Court	9,127.86	16,100	35,101.95	36,707.99
Charlestown Court	9,665.33	8,200	43,204.19	45,668.33
Chelsea Court	8,457.19	8,900	44,714.20	50,578.57
Dorchester Court	13,440.47	12,600	58,608.78	62,859.28
East Boston Court	17,011.41	18,800	39,888.58	43,411.78
Roxbury Court	38,698.22	44,300	146,162.75	153,135.10
South Boston Court	15,468.22	11,600	44,564.64	48,635.02
West Roxbury Court	14,654.38	11,800	51,463.63	54,114.50
Boston Juvenile Court	5.00	150	41,272.77	45,906.15
Total	$249,480.58	305,950	$1,092,337.32	$1,157,725.46
				305,950.00
				$851,775.46
				1,497,401.26
Adding to this Suffolk figure the total of the previous table of 13 counties gives a total cost for district courts for all 14 counties of *approximately*				$2,349,176.72

County Costs for Probate Courts in 1947

These costs (not including salaries paid by the commonwealth) as reported by treasurers or taken from their annual printed reports were as follows:

Barnstable	$2,113.11
Berkshire	2,552.71
Bristol	5,978.07
Dukes County	392.67
Essex	9,375.94
Franklin	1,310.35
Hampden	9,227.96
Hampshire	1,345.51
Middlesex	*44,600.54
Nantucket (not separated in printed report)	–
Norfolk	6,441.13
Plymouth	17,549.52
Suffolk	48,740.14
Worcester	10,777.05
Total	$160,404.70

* The treasurer of Middlesex County has furnished us with additional figures as to overhead costs of the Probate Court in that county in 1947, which do not appear to be separately allocated in the other counties as follows.

Probate Court (from Civil Court Expenses and not including salaries paid by the Commonwealth)	$16,110.70
(law and record books, and supplies)	14,078.97
(repairs and furnishings)	6,443.83
(fuel, light and water)	7,967.04
Total Probate Court	$44,600.54

COST OF SUPREME JUDICIAL COURT TO SUFFOLK COUNTY

This amount for 1947 as reported by the City Auditor was $56,734.54. The cost for this Court in other counties was small and is not tabulated. The court sits mostly in Suffolk.

APPROXIMATE TOTAL COUNTY COST FOR ALL COURTS

Adding together the various county totals:

Superior Court	$2,882,745.97
District Courts (13 counties)	1,497,176.26
Suffolk County District Courts	851,775.46
Probate Courts (13 counties)	160,404.70
Supreme Judicial Court (in Suffolk)	56,734.54
	$5,448,780.90

So much for the county costs. Turning now to

The Costs Paid by the Commonwealth

These costs appear in the general appropriation act of 1948 (c. 198) and the supplementary budget act (c. 669). The items covering judicial and other salaries and expenses in the Supreme Judicial, Superior, Land* and Probate Courts, District Attorneys, Attorney General's department, Board of Probation, Bar Examiners, Appellate Tax Board and Industrial Accident Board (both of which deal with matters formerly in the Superior Court), the Department of Correction, the Parole Board, one-third of the cost of maintenance of the Suffolk County Court House, the new Youth Service Board and other lesser items amounted to approximately $7,639,400.63.

When this is added to the total of $5,448,780.90, paid through the counties, we have an overhead cost of the administration of justice paid by the public of approximately $13,088,180.46 to, or from, which various other more or less substantial items of expense or receipts could be added or subtracted but they are not readily ascertainable and are not needed for the purpose of the substantial picture of the taxpayer's burden presented in this report.

We have referred to the scattered arrangements between the counties and the Commonwealth for the payment and accounting of the cost of administering justice, which obscure the picture as a whole until it is pieced together as we have tried to present it. As stated in the third report of the Council in 1927 (p. 10),

> "It is possible to abuse the word 'business' in connection with our courts, but an instrument of government that involves an annual outgo as large as does our legal system has unquestionably its business side."

* The net cost of the Land Court appears on page 72 of this Report. This court pays more of its cost than any other court.

Turning, therefore, to another business aspect of the system, statistical Table 4 on page 84, shows 3149 jury verdicts during the year ending June 30, 1948 of which 2244 were for the plaintiff and 901 for the defendant. Of the verdicts for the plaintiff 177 were for less than $200.00, 247 for $200 to $500, 250 for $500 to $1,000 and 454 over $1,000.

At our request the clerk of the Superior Court in Suffolk "broke down" the verdicts for less than $200 during the two months of May and June in that county. There were 27 of such verdicts — two in contract for $107.52 and $5.45; 23 motor tort verdicts of which two were for $175, two for $150, five for $100, one for $70, one for $62.50, four for $50, three for $25, one for $20.75, one for $20, one for $15, two for $5.00. There were two verdicts for torts other than motor torts for $188 and $150.

In the 23rd Report (Table 12 on p. 91) shows that, in 1947, the court sat 3,060 and one-half days in civil jury trials in all counties which as shown by Table 4 (p. 84) resulted in 3,119 verdicts, thus showing an average of almost one day to each jury trial. Table 4 showed 734 verdicts in Suffolk of which 51 were for less than $200 as stated above, 93 were from $200 to $500, 96 from $500 to $1,000, and 162 were for more than $1,000 and, in 332 cases, the plaintiff recovered nothing at all as there were verdicts for the defendant of which 88 were ordered by the court which means that the plaintiff did not have enough of a case even to be submitted to the jury. Table 12 shows that the court sat 1,308 days for civil jury trials in Suffolk, or an average of almost two days to reach each verdict and, in almost half of the cases (332 out of 734) the plaintiff recovered nothing and in 51 more less than $200.

Tables 4 and 12 (pp. 84 and 91 of this Report) show some differences in the time spent. The court sat 2,837 days to produce 3,149 verdicts in the Commonwealth and, in Suffolk 1,150 days to produce 809 verdicts of which 419 were for the plaintiff and 390 for the defendant. According to these figures, as reported by the clerks of court, the average time per civil jury trial in Suffolk is greater than it is in the Commonwealth as a whole.

Turning again to the matter of cost, the Council, in its 7th Report in 1931, pointed out (pp. 13–14) that:

> "The cost to the public of a jury trial for judges, jurors, court attendants and general overhead in the Superior Court is estimated at between $400 and $500 a day. Elaborate statistics . . . in the Fourth Report (pp. 86–111) and the Fifth Report (pp. 80–103) show how burdensome these costs are to the public. They also show that in about half of the cases before juries the plaintiff recovers nothing and in the other half the verdicts recovered by the plaintiff are mostly small."

Mr. Addison L. Green, of Holyoke, when Chairman of the Council, and Hon. Joseph J. Corbett, formerly corperation counsel of Boston, Judge of the Land Court, and also a member of the Council, made

the estimate above about 1927, after extended examination, but found no way of ascertaining the exact cost, including overhead. Assuming, even in these times of high costs, the low cost of only $300 a day for jury trials and applying that figure we find that the public cost of 3,060½ days of civil jury trials in 1947, at $300 a day, was about $918,000.00 to give jury trial to the parties in 3,119 cases, that in these cases 878 plaintiffs recovered nothing at all and 178 more recovered less than $200 and a large proportion less than $1000. This illustrates the extent to which the taxpayers are charged for the most expensive method of trial for a very small number of people.

If we assume the more probable estimate of $400 a day, the cost in 1947 was about $1,224,000 for the jury trials alone. It is no disparagement of the right to jury trial to suggest that the taxpayers deserve some slight consideration in the light of these figures.

These reports speak for themselves and their totals seem to suggest, without argument, that the entry fee in the Superior Court, which has remained at three dollars ever since 1884, should, reasonably, be increased from three to five dollars and that a moderate fee for invoking the most expensive method of trial which calls for the services, not only of a judge and court officers, but for twelve jurymen at six dollars a day, would be a reasonable and justifiable requirement to reduce somewhat the public burden.

The legislature, with the assistance of special commissions, is constantly studying the problems of the rising cost of government in general. We renew all the recommendations as to fees in the 23d Report; but, in view of the figures shown in this report, we have selected some for special emphasis this year.

We now recommend for the Supreme Judicial and the Superior Courts an entry fee of five dollars instead of three dollars. We also believe that a jury fee of fifteen dollars is a reasonable amount to require a litigant who claims a jury trial to contribute towards the added large cost to the taxpayers which he imposes upon the public by that form of trial. The Council, therefor, recommends the requirement of that amount and, in that connection, we renew the recommendation of last year of a voluntary plan for a jury of six at the lower fee of five dollars. In connection with this recommendation we stated, in last year's report, that,

> "every additional juryman costs more money at the rate of six dollars a day. We believe many litigants would be satisfied with a trial before a jury of six. . . . We believe such a provision would result in a substantial public saving to the various counties by the use of smaller juries. The extent of such savings can be ascertained only by trying the experiment. The whole situation will be optional. The mechanics of the plan can be worked out by the court by having a separate

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NOTE: The use of juries of six in other states, especially Connecticut, Colorado, Florida and Virginia, is described in extracts from the 5th report of the Rhode Island Judicial Council reprinted in 17 Mass. Law Quart., Aug. 1932, pp. 12–14.

list of cases for juries of six so that the number of jurymen needed might be estimated. It can do no harm to provide for it and we, therefore, recommend it."

In view of the amount of careful clerical work involved in the issuance of a restraining order or an injunction, in equity cases, we recommend a fee of five dollars for such issuance and for the same reason, three dollars for the issuance of a subpoena in equity.

We also recommend, an increase in the fee in the Superior Court, and in the Probate Courts, for the entry of a libel for divorce, or for affirming or annulling a marriage, from five to ten dollars, and, except in small claims cases, an entry fee of $3 instead of $1 in the District Courts, to reduce somewhat the taxpayers load of almost two and one half millions for the District Courts alone.

We submit the following:

DRAFT ACT

(As to Fees in the Supreme Judicial and Superior Courts)

Section 1.

Section 4 of Chapter 262 of the General Laws as most recently amended by Section 2 of Chapter 345 of the acts of 1939 is hereby further amended by striking out the fifth clause thereof and substituting therefor the following

"For the entry of an action or suit or other civil proceeding, or record and transmission of papers, in the Supreme Judicial Court, whether for the consideration of a single justice or of the full court, *five* dollars;

"For such entry in the Superior Court, or for filing a petition to the county commissioners *five* dollars;

"For entry in the Superior Court of a libel for divorce or for affirming or annulling a marriage *ten* dollars;

"For filing a claim for jury trial, or a motion to frame issues in the Superior Court for jury trial, or for the entry in the Superior Court of such issues framed by the Land Court, or by a Probate Court, and transmitted to the Superior Court for trial, *fifteen* dollars, but, if a claim is made, or a motion is made, or issues thus transmitted, for a trial by a jury of six, instead of a full jury of twelve, *five* dollars; for the issuance of a restraining order or injunction, *five* dollars, and of an original sub-poena, *three* dollars.

"Each of which fees shall be paid by the party entering and filing the same.''

"And by striking out the 6th clause thereof which now reads 'for the entry record and transmission of papers of each question or cause in the Supreme Judicial Court for the Commonwealth, three dollars.' "

(As to Fees in the Probate Courts)

Section 2.

Section 40 of said Chapter 262 as amended by Section 1 of Chapter 324 of the acts of 1934 is hereby further amended by striking out the word "five" in the second paragraph specifying the fee for the entry in the Probate Court, of a libel for divorce or for affirming or annulling a marriage, and substituting the word *"ten."*

(*As to Claim for a Jury of Six and as to Jury Lists*)

Section 3.

Section 60 of Chapter 231 of the General Laws is hereby amended by substituting there for the following.

"*Section 60.* Separate lists of cases to be tried by jury, *and by a jury of six,* shall be kept in the Superior Court and no action shall be entered thereon, except as otherwise expressly provided, unless a party, before issue joined, or within ten days after the time allowed for filing the answer or plea, or within ten days after the answer or plea, has, by consent of the plaintiff or permission of the court, been filed, or within such time after the parties are at issue as the court may by general or special order direct, files a notice that he desires a jury trial, *or a trial by a jury of six;* but in a case in which damages are demanded, the court may of its own motion refer the assessment thereof to a jury."

(*As to Fees in the District Courts*

Section 4.

Section 2 of said Chapter 262, as amended by Section 1 of Chapter 345 of the acts of 1939, is hereby further amended by striking out the first sentence of the third paragraph and substituting the following sentence.

"For the entry of an action, other than a small claims action under the rules of court in accordance with Sections 21–25 of Chapter 218, three dollars, and for the entry of a petition, complaint or commencement of supplementary proceedings under Chapter 224, including filing papers and entering up and recording judgment, one dollar."

Report of Material Facts in Equity and Probate Appeals

In connection with appeals in equity G. L. chapter 214, section 23 (as amended by St. 1947 c. 365, s. 2) provides that

"The justice" (of the Supreme Judicial or Superior Courts) "by whom a decree was made, if a written request by any party entitled to appeal therefrom is filed in the office of the clerk of such court within ten days after such party has been notified of the entry of the decree, *shall report the material facts found by him* within thirty days after the filing of the request as aforesaid, or within such further time as the chief justice of such court may grant, upon written request by such justice within said thirty day period; provided, that where such decree is entered upon an order made by a justice other than the one entering the decree, such other justice shall make the report of material facts requested under this section. If no request for a report of material facts is so filed, such report shall be in the discretion of the justice."

A similar provision as to appeals from probate courts appears in G. L. chapter 215, section 11 (as amended by St. 1947, c. 365, s. 3) as follows:

"The judge by whom an order, decree or denial was made *shall report the material facts found by him,* on request of any party entitled to appeal therefrom made within ten days after such party has notice of such order, decree or denial; otherwise such report shall be in the discretion of the judge."

The chief justice of the Supreme Judicial Court has called to our attention for consideration the need of a slight statutory change in regard to such reports.

As stated by the Chief Justice:

"The object of these statutory provisions is, of course, to enable this court on the appeal to know what facts the judge found in order that we may determine whether the decree appealed from is right in law on the facts found. But the difficulty is that the contents and the degree of particularity of the judge's report of material facts is left entirely to him. He may fully grasp the purpose of the statement and may do a careful piece of work in laying out for the use of this court the subsidiary and ultimate findings which led him to his decree, so that we may have the best possible basis for our own review of his action. But it does not always work out that way.

"It is certain that these statutes providing for reports of material facts, although very useful and often a great saving of expense, are not working as they should and are producing injustice in occasional cases. What should be done?

"In the first place, it will not do simply to sit back and say that a party who wishes to appeal can always have all the evidence reported so that this court on appeal can make its own findings. That is true, but it is not an adequate answer to the difficulty. The expense of printing may be too great. The very purpose of the statute is to save that expense. Or the appealing party himself may not recognize a deficiency in the findings. There seems to be no way in which this court can itself apply a remedy." See *Sullivan* v. *Sullivan*, 320 Mass. 114; *Vergnani* v. *Vergnani*, 1947 Ad. Sh. 1045 and 1049.

It is common practice in equity when a case is referred to a master to find the facts, if the court considers that the master's report is inadequate in detail or in subsidiary findings or does not furnish findings upon the precise point on which findings are needed, for the court to recommit the case to the master with such directions as will enable him to supply exactly what the court thinks it needs. We submit herewith a draft act which will simply make it clear that the full bench of the Supreme Judicial Court may call upon the trial judge in equity and probate appeals to supply the missing links in his report of material facts so that the full court can do more exact justice and can decide such appeals on their merits rather than on the deficiencies in the judge's report of the material facts.

The act would not mean that the case would be remanded to the trial court for re-trial. The case would stay with the full court which would merely ask the trial judge to make further report of facts upon the evidence presented to him. If the trial judge could not report more findings, he could say so, but the purpose of the present requirement of a report is that he should make a sufficient report of material facts, to present the issues of law so that the full court on appeal may have before it all the facts which led the trial judge to his conclusion. Since that is the purpose of the existing

statutes and that purpose sometimes fails of accomplishment for the reasons stated, the proposed amendment is designed simply to carry out that purpose.

We, therefore, recommend the following:

DRAFT ACT

Chapter 231 of the General Laws (Ter. Ed.) is hereby amended by inserting after section 125 the following new section.

Section 125A. Upon appeal in any case, in equity or probate, where the evidence is not reported, the full court, if of opinion that a report of material facts required by section 23 of chapter 214, or section 11 of chapter 215, is not sufficient to enable the court properly to adjudicate the subject matter involved, may in its discretion, by order transmitted to the trial court, direct the justice, or judge, to make such further report of facts as the full court shall deem necessary. Upon compliance with such direction, seven typewritten copies of such further report shall be filed by the clerk or register with the clerk of the supreme judicial court for the commonwealth for the use of the full court.

We believe it to be in the interests of justice that this matter should be considered as promptly as possible and if the proposal is approved, that it be enacted as an emergency act in order that the full court may be authorized to act under it as soon as possible.

JURY COMMISSIONERS

In our 23rd Report last year we recommended a draft act providing for the appointment of two jury commissioners for a district comprising the counties of Middlesex, Norfolk and Suffolk. Our reasons for this recommendation were stated as follows:

"After the disclosures of jury-fixing some fifteen years ago the legislature, following a special message of Governor Ely, provided for a special 'Crime Commission' to study the practice and procedure followed in the administration of the criminal at law. That commission consisting of Frank L. Simpson, Daniel J. Lyne and Charles H. Cole, studied, among other matters, the methods of selecting jurors and its results, and, in its report (Senate Document 125 of 1934, 19 M.L.Q. No. 2, Jan. 1934) after describing the present methods of selecting jurors, said,

" 'The principal objection to this selective process is its political character. The work which a juror has to perform is clearly not political but judicial. The selection of jurors should, therefore, be under the supervision of the judiciary, and we recommend that it be placed there forthwith.'

"They then proposed a jury commissioner for each county (see pp. 138–142).

"At the same time the Judicial Council discussed the subject in its 9th Report (pp. 9–10) and also recommended a jury commissioner or commissioners, but not for each county. They concluded as follows:

" 'While this report was being printed the Special Commission on "crime" issued their report showing that they had arrived at a similar conclusion as a result of their independent investigation, and recommending a jury commissioner for each county.

" 'The suggestion of a jury commissioner seems to us more adapted to densely populated districts than rural communities where people still know each other, and it might be well to try it first in some part of the metropolitan area. It is not a new proposal. It is in operation in Rhode Island and elsewhere.'

"Meanwhile a special committee of the Boston Bar Association was appointed to study the whole jury system, during the year 1934. That committee made a detailed report which was printed in the *Bar Bulletin* (Supplement January 1935). It contained not only an account of the existing system, but a study of the Ohio system in operation in Cleveland, and recommended a jury commissioner for the commonwealth. . . .

"The Ohio or 'Cleveland' System

"For the past fifteen years or so the Ohio 'jury code' has provided for jury commissioners appointed by the courts in different districts to examine and select the lists of jurors and grand jurors who are to serve in those courts. Two commissioners 'neither of whom shall be an attorney at law or more than one of whom shall be of the same political party' are appointed, for instance, by a majority of the judges of the Court of Common Pleas for Cuyahoga County in which the city of Cleveland is situated. They are appointed for no fixed term and are removable by the majority of the judges 'for good cause shown.' The method of appointment and the duties of the commissioners are set forth in the Ohio statutes ss. 11419–2 to 11419–28. Deputy commissioners and such clerks and messengers 'as shall be necessary' are appointed by the commissioners with the consent of the majority of the judges and the judges fix the compensation of the commissioners, deputy commissioners, messengers and clerks. A suitable office, stationery, etc., is provided for the commissioners and the whole matter of selecting jurors for the jury lists is in their hands subject to orders of the court. They are given the authority to summon prospective jurors and others for examination under oath in considering the qualifications and eligibility of persons from the voting lists.

"When the list is prepared notice of the time of drawing is published in at least two newspapers of general circulation and the drawing takes place in public (generally in the court house) in the presence of the clerk of court, the sheriff, and at least one judge of the court. The list of jurors thus drawn to the number needed at the particular term (or we would say sitting) of the court is signed by the clerk. This is not what is called a 'special' or 'blue ribbon' jury selection — it is simply a more careful examination and selection of all persons eligible for jury duty by impartial commissioners under the direct supervision of the court. This assists the courts which do not have time for such thorough examination. . . . This practice, in operation for about 15 years, has eliminated the political aspect of jury selection and sifted the unqualified and unfit persons from the jury lists.

"In the light of such successful practice the committee of Federal judges, of which Judge Knox of New York is chairman, appointed by the National Conference of Senior Circuit judges, has recommended an act of Congress, with the approval of the Conference, to provide for jury commissioners in the Federal courts. The bill, thus prepared, is now pending before Congress and has been examined by the Council in the preparation of this report. An article by Judge Knox, explaining the need of better methods of selecting jurors, appeared in the Journal of

the American Judicature Society for June, 1947, and also in the New York University Law Quarterly Review for July, 1947. The bill to provide jury commissioners for the Federal courts was supported by the House of Delegates of the American Bar Association.

"We believe the time has come to try to reduce to a minimum the political possibilities in the selection of jurors referred to by the 'Crime Commission' as quoted above and, to that end, to try the experiment of jury commissioners in a limited area.

"The Council is still of the opinion, expressed by its former members in 1933 in the 9th Report, that it will be wiser to try the experiment 'in some part of the Metropolitan area rather than on a state-wide basis.' State-wide experiments with new practices are apt to arouse multiplied and varied objections in different parts of the commonwealth and they have generally failed of passage, we believe, partly because of apprehensions and partly because of compromised provisions which have not been convincing as to their soundness. If we try the experiment locally we can learn from experience whether or not it may be wisely adapted to other parts of the commonwealth.

"We, therefore, recommend that jury commissioners be provided for a limited district comprising Middlesex, Norfolk and Suffolk counties, all contiguous and having constant need of jurors. To that end we have revised the draft act submitted by the 'Crime Commission.' We have inserted the substance of some parts of the Ohio system including the special qualifying oath for the commissioners."

This year we have revised the draft act submitted last year in matters of detail. In the draft of last year it was provided that the salaries and expenses of the commissioners incidental to the work of selecting jurors should be paid by the Commonwealth. At the hearing before the Judiciary Committee the question was asked why the people in other counties should be charged through taxation by the Commonwealth for the cost of selecting jurors in three counties. The question was a good one, and, as it was not the intention of the Council to suggest a shifting of the present expense of drawing jurors in the three counties to other counties, we have provided in the draft submitted herewith, in the proposed section 52, that, while the expense should be paid in the first instance by the Commonwealth, the substantial part of it (other than the salaries of the commissioners and assistant commissioners needed for the new system) shall be apportioned to the various counties according to their percentages of jury trials, and that the counties should reimburse the Commonwealth for the expense thus apportioned as determined by the director of accounts as is now provided by section 50 of chapter 35 of the General Laws in regard to expenses provided for in that chapter.

In that section the apportionment of expense is based on county valuations. As the purpose of selecting jurors is for jury *trials*, the average number of such trials for a period of years, as shown by the

table in the annual reports of the Judicial Council, seems to furnish the best basis for apportionment. The increase in receipts from fees, recommended on page 16 of this Report, would, we believe, yield more than any cost involved.

For the eleven years (including several war years) from 1938–1948, the number of jury trials in the three counties is shown in the 14th to the 23rd Reports, and in this Report in the tables on pages 80–83.

JURY TRIALS 1938–1948

	MIDDLESEX		NORFOLK		SUFFOLK	
	Civil	*Criminal*	*Civil*	*Criminal*	*Civil*	*Criminal*
1938.....	427	505	420	154	797	1137
1939.....	474	488	166	121	1037	1372
1940.....	337	554	133	113	850	1312
1941.....	426	581	98	205	830	1325
1942.....	453	294	111	175	883	1180
1943.....	421	128	73	118	881	797
1944.....	429	242	64	75	1086	830
1945.....	391	192	60	78	609	647
1946.....	299	313	79	122	617	692
1947.....	377	348	100	142	858	955
1948.....	287	326	147	102	830	834
Total.....	4321	3971	1451	1405	9278	11,081
Combined Total ...	8292		2856		20,359	

These combined totals suggest an apportionment of the expense of 25% to Middlesex, 10% to Norfolk and 65% to Suffolk and, accordingly, we have inserted those percentages in section 52 of the draft act

As the plan is a new one with new officials, it seems to us that the salaries of the commissioners, and assistant commissioners needed, as distinguished from the clerical force and other expenses of that kind, may fairly be charged to the Commonwealth. Accordingly we provide for this in the proposed section 52.

As the selection of jurors for each of the three counties (jurors being selected for service only in their own county) will involve the listing and investigation of, perhaps, a million, or, at least, a very large number of persons, such a new system cannot be put into effect fully at once. The commissioners appointed by the court will have to plan the system with the court, will have to ascertain the extent of the clerical force needed, the assistants and the work arrangements. In order that the plan may be gradually put into operation it will be necessary to allow the commissioners to use the present jury lists locally prepared for the year following their appointment, and

possibly for a second year, with the approval of the court. The question of the date for the annual reports by the local authorities to the commissioners of the eligible persons, in the various cities and towns in the counties, arises. We have suggested dates for the consideration of the legislature, but, possibly, these dates may need to be changed in the light of the discussion of the proposal.

We submit the following:

DRAFT ACT

Section 1. Chapter 234 of the General Laws is hereby amended by adding at the end the following new sections, under the caption —

Jury Commissioners in the Counties of Middlesex, Norfolk and Suffolk

Section 43. There shall be two jury commissioners appointed by a majority of the justices of the Superior Court for a district comprising the counties of Middlesex, Norfolk and Suffolk. Upon the expiration of the term of each commissioner, a majority of said justices shall appoint his successor, for a term of five years, at such annual salary, not exceeding $8,000, to be paid by the commonwealth, as hereinafter provided, as they may determine. In the event of a vacancy occurring during the term of a commissioner, the same shall be filled by said justices for the remainder of said term. The jury commissioners shall appoint assistant commissioners and clerical assistants, upon such terms and conditions, at such annual salaries, to be paid by the commonwealth, as hereinafter provided, as the majority of the justices may in writing approve. The appointments of commissioners and assistant commissioners shall be made in writing and shall be filed in the offices of the clerk of courts for the counties of Middlesex and Norfolk and of the clerks of the superior court for both civil and criminal business in the county of Suffolk. An assistant commissioner may perform such duties as the jury commissioners may direct, or, in case of illness, or other temporary inability of a commissioner, such of the duties of a commissioner as said justices may direct, first taking and subscribing the oath required of a commissioner. A majority of the justices may at any time, for good cause shown, remove any commissioner or assistant commissioner, and may fill any vacancy so created. All appointments of assistant commissioners shall be made on the basis of ascertained merit and fitness alone, in accordance with rules prescribed by said justices. The commissioners and assistant commissioners shall receive from the commonwealth, as hereinafter provided, such travelling expenses as are necessarily incurred in the performance of their duties, upon certificates of the commissioners approved by the chief justice. Each of the counties in said district shall furnish the commissioners with suitable offices in a shire town in the county, together with the necessary equipment and supplies. Each commissioner and assistant commissioner shall, during his term of office, devote his full time to the duties of the same.

Section 44. Before entering upon the duties of his office each of the commissioners in addition to any other qualifying oath, shall take and subscribe the following oath of office and file the same with the clerks of court specified in section forty-three.

"I do solemnly swear (or affirm) that I will honestly and faithfully discharge the duties of a jury commissioner without fear or favor: and that I will consent to the selection of no person as juror whom I have been solicited to name as juror or whom I believe to be unfit for that position, or likely to render a partial verdict in any cause in which he may be called as juror; and that I will report to the court the names of any and all persons who, in any manner, seek by request, hint or suggestion to influence me in the selection of jurors."

Section 45. The board of election commissioners in cities having such boards, the board of registrars of voters in other cities and the board of selectmen in towns in said counties shall annually before April 1st, unless otherwise ordered by said justices, make and file with the jury commissioners a certified list containing the names, addresses and occupations of all persons qualified to vote for representatives to the general court whether registered voters or not, shown on their records, and liable for jury service under Section 1 of this chapter.

Section 46. From such certified lists, the jury commissioners shall anually, before July 1st, prepare a list of such inhabitants of every city and town in each of said counties who are of good moral character, of sound judgment, and free from all legal exceptions, and who are not exempt from jury service under sections one or two, as they think qualified to serve as jurors. They shall not place the name of any person on said list unless such person is determined to be qualified as aforesaid upon the knowledge of said commissioners or upon the receipt by them of reliable information indicating that said person is so qualified. The commissioners may summon any person to appear before a commissioner or assistant commissioner at any place within the city or town wherein such person resides for examination as to his qualifications for jury service, and may compel his attendance there and the giving of testimony, under oath, in the same manner and to the same extent as may magistrates authorized to summon and compel the attendance of witnesses. The jury commissioners may further investigate by inquiries at such person's place of residence and of business or employment, or by other means, his reputation, character and fitness for such service. They may also so summon to appear any person to answer under oath all questions relating to the character or fitness for jury service of any other person. All such information obtained by the commissioners shall be confidential. Any commissioner or assistant commissioner may administer oaths to any and all persons herein mentioned.

Such lists, so prepared by the commissioners, shall include not less than one juror for every hundred inhabitants in each city or town in each of said counties, nor more than one for every sixty, according to the latest census, state or national. In no event shall any person's name appear on the jury lists for more than three successive years, or on more than two such lists in any six-year period, nor shall such lists contain the name of any person who has been convicted of any felony.

In the preparation of the said lists, the election commissioners, the registrars of voters in cities, and the board of selectmen in towns, and the chief of police or the police commissioner or the official having charge of the police, in each city or town in said counties shall, upon request of said commissioners, furnish them all such assistance as the commissioners deem proper to enable them to perform their duties. Any election commissioner, registrar of voters, selectman or police official who neglects or refuses to furnish such assistance shall be liable to a fine of

not more than five hundred dollars. The board of probation shall also furnish the commissioners with records and information on request of the commissioners. The sheriffs of said counties shall also furnish such assistance in their respective counties as the commissioners may require, subject to the approval of said justices, and shall assign such officers appointed for attendance upon the several sessions of the superior court as may be designated by said justices for attendance upon the commissioners or for specified duties in counties where jury-pooling, so called, is practised. Officers so assigned shall receive from the county the same compensation as for attendance upon the superior court.

Section 47. A copy of such list, containing the address and occupation of each person named therein, shall annually, before August first, be furnished to the clerks of the superior court in each of said counties, to be kept by said clerks for the use of said court. A similar copy shall be kept for public inspection at each office of the jury commissioners.

Section 48. The jury commissioners may, from time to time, revise said lists by striking from them the names of persons found by them to be ineligible for jury service. If a jury list prepared as provided in section forty-six includes less than one juror for every one hundred inhabitants of a city or town, the jury commissioners shall prepare a further list and like proceedings shall be had as in the case of the original list, until the required number of jurors is obtained.

Section 49. Notwithstanding the provisions of section eleven, writs of venire facias issued in said counties shall be served upon the jury commissioners who shall forthwith proceed to the drawing of jurors as hereinafter provided.

Section 50. For the purpose of drawing jurors, the jury commissioners shall provide a separate box for each city and town in said counties, and the name of the city or town for which a box is used shall be legibly marked thereon. The name of each individual remaining on the jury commissioners' list shall be on a separate piece of paper, which shall be placed in the box marked with the name of the city or town of his residence. After service of venires upon the jury commissioners, they shall seasonably notify the chief justice of the superior court of the time and place of a public meeting or meetings in the county for the purpose of drawing jurors, and the said chief justice, or one of the justices of the superior court designated by him, shall be present at the drawing of said jurors. A jury commissioner or assistant commissioner shall attend said meeting, and shall, in the presence of the chief justice or justice designated, mix together the slips containing the names in said boxes and, without seeing the names written on said slips, draw from each box the number of names required. He shall read each name aloud when drawn, pass the slip of paper on which it appears to the said chief justice or justice attending, and shall then cause it to be written in the order in which it was drawn upon a list provided for that purpose, at the bottom of which the jury commissioners shall certify that the drawing was in accordance with law. All such lists shall be filed in an office of the jury commissioners, and a copy of each such certified list, together with the address and occupation of each juror drawn for each of said counties, shall be furnished to the clerk of the superior court in such county.

Section 51. Except as otherwise provided in sections forty-three to fifty, inclusive, all provisions of law relative to the drawing of jurors and grand jurors, shall apply to the counties of Middlesex, Norfolk and Suffolk.

"The jury commissioners may refer any question arising in connection with the preparation of lists to the chief justice of the superior court, or to a justice designated by him, for decision, and the court may issue such orders as it may deem necessary to carry out the purposes of sections 43–50."

Section 52. All expenses, other than the salaries of the commissioners and assistant commissioners incurred under sections 43–51, inclusive, shall be paid in the first instance by the commonwealth, from such funds as may be appropriated by the general court; and the counties of Middlesex, Norfolk and Suffolk shall severally reimburse the commonwealth therefore in the following proportions — Middlesex twenty-five percent, Norfolk ten per cent, and Suffolk sixty-five percent, as determined by the director of accounts.

Section 2. A majority of the justices of the superior court shall, on or before November 1, 1949, appoint two jury commissioners, at such annual salary not exceeding $8,000, to be paid by the commonwealth as hereinbefore provided, as they may determine, with the powers, duties and responsibilities set forth in section one of this act, one for a term of three years and one for a term of five years. Upon the expiration of their respective terms, their successors shall be appointed as provided in said section one.

Section 3. On or before April 1, 1950, the board of election commissioners in cities having such boards, the board of registrars of voters in other cities and the board of selectmen in towns in the counties of Middlesex, Norfolk and Suffolk shall transmit to the jury commissioners for said counties the jury lists then prepared, and such lists, with such changes and additions as may be made by said jury commissioners, may be used by them in the performance of their duties for the period from July 1, 1950 to June 30, 1951, and for such further time as a majority of the justices of the Superior Court may direct.

Section 4. This act shall take effect on

Damages in Mandamus Proceedings

The writ of mandamus is an ancient technical writ which is frequently used in Massachusetts in cases, among others, in which a person claims that he has been unlawfully removed from office. Section 5 of chapter 249 of the General Laws, as amended by §2 of chapter 374 of the Acts of 1943, provides that in such proceedings "if the petitioner prevails his damages shall be assessed and judgment shall be rendered therefore, with costs," etc. As pointed out in *Hill* v. *Boston*, 193 Mass. 569, *Lowry* v. *Commissioner of Agriculture*, 302 Mass. 111, 121, *Henderson* v. *Mayor of New Bedford* 320 Mass. 663, 668, and other cases there cited, there is no statutory provision that an order of re-enstatement shall be "without loss of compensation", or words to that effect, and the petitioner may recover only such damages, other than lost compensation, caused by his unlawful removal. In order to recover his back pay, he must bring a separate action at law. This situation seems to us merely a survival of earlier practice which, whatever may have been the earlier reasons for it, is now merely a rule which causes an unnecessary separate action to

decide a question which may be adequately and more promptly decided in the mandamus proceeding. We therefore recommend the following:

DRAFT ACT

Section 5 of chapter 249 of the General Laws as amended most recently by section 2 of chapter 374 of the acts of 1943 is hereby further amended by inserting in the sixth sentence thereof after the word "damages" the words "including any salary or wages to which the petitioner may be entitled."

Equitable Replevin

For many years the statute (now G. L. chap. 214 §3 cl. 1) has provided that the Superior court shall have jurisdiction in equity of "Suits to compel the redelivery of goods or chattels taken or detained from the owner, and so secreted or withheld that they cannot be replevied."

The jurisdiction under this clause is known to lawyers as "equitable replevin." "Replevin" is a technical and ancient common law remedy for an owner whose property has been taken or detained. The clause giving jurisdiction in equity above quoted was intended to protect the owner in special circumstances if he could prove the special circumstances. If a proceeding in equity is a more direct and effective method by which an owner may get back his goods from someone who has wrongfully taken or withheld them, we see no reason why he should not be allowed to proceed in equity without the preliminary obstruction of showing special circumstances based on the earlier practice of restricted equity jurisdiction which may cause delay, unnecessary waste of the time of the courts and which seems to us not adapted to modern conditions. If an owner and his counsel consider equitable replevin a more effective proceeding than an action of replevin at law, we see no reason whatever why he should not be allowed to use it.

We therefore recommend the following:

DRAFT ACT

Clause (1) of Section 3 of chapter 214 of the General Laws is hereby amended by striking out the words "and so secreted or withheld that they cannot be repleved" so that the clause will read "suits to compel the redelivery of goods or chattels taken or detained from the owner."

LATE DEMANDS FOR PROOF

Section 30 of chapter 231 of the General Laws, in order to avoid waste of time in the proof of facts which are really undisputed, provides that, in a civil action in which one of the parties is an executor, or some other kind of fiduciary, or a corperation, or in which the action relates to something which happened on a public way, the fact

of the fiduciary position, or that the place is a public way, "shall be taken to be admitted unless the party controverting it files in court within the time allowed for the answer . . . or within ten days after the filing of the paper containing" the allegation of the fact, "a special demand for its proof."

In the recent case of *Boutillier, administratrix* v. *Wesinger* (1948, Advance Sheets 349, at page 350) the Supreme Judicial Court stated that as the statute contained "no provision for extension of . . . time," apparently the statute did not allow the court to grant an extension if, in the courts judgment, the circumstances justified it. In that particular case the defendant did not raise the question until after the close of the evidence at the trial which was so late in the proceedings as to defeat the purpose of the statute, but the passages in the opinion suggest the serious doubt, in the minds of practising lawyers, whether the statute authorizes the court to allow a late demand even where circumstances, such as illness of counsel or other facts appear, which would justify the allowance of a late answer or an amended answer. So absolute a date for a matter of this kind, without any allowance for special circumstances in the discretion of the court, does not seem to us in the interests of justice and we think the doubt should be removed by an express provision in regard to a late demand under reasonable circumstances.

For this reason we recommend the following:

DRAFT ACT

Section 30 of chapter 231 of the General Laws is hereby amended by inserting after the words "containing such allegation," the words, "or within such time as the Court may allow on motion and notice," so that the section will read:

"§30. Fiduciary or Corporate Capacity? Or Existence of Public Way Admitted? Unless? etc. — If it is alleged in any civil action or proceeding that a party is an executor, administrator, guardian, trustee, assignee, conservator or receiver or is a corporation, or that a place is a public way, such allegation shall be taken as admitted unless the party controverting it files in court, within the time allowed for the answer thereto, or within ten days after the filing of the paper containing such allegation, *or within such further time as the Court may allow on motion and notice, a special demand for its proof.*"

As to Service on Non-residents

The statutes provide for service of process on foreign cooperations doing business in this state, but, if a non-resident individual, or partnership, does business in Massachusetts through an agent who has charge of such business, a Massachusetts creditor of such business can not bring suit against him by serving the writ on the resident agent. In our twenty-third report last year (pages 8 to 12), at the request of the legislature, we discussed this situation and made a recommendation. We pointed out that,

"For many years the Massachusetts statutes (G. L. c. 223, Pages 29–31) have provided that process may be served upon a defendant in Massachusetts by reading it to him or by delivering to him a copy or by leaving a copy for him 'at his last and usual place of abode, if he has any within the Commonwealth known to the officer.' 'If he has none, it shall be left with his tenant, agent or attorney, if he has any within the commonwealth known to the officer"

We see no reason why a Massachusetts creditor of a non-resident individual, who has an agent in charge of his Massachusetts business, should not also be allowed to serve process on that agent on a claim arising out of such business. We pointed out that such service has been allowed in Pennsylvania ever since 1856. Accordingly, we recommended a bill last year, which was favorably reported by the Judiciary Committee as House bill 2011. The bill passed the House, but was rejected in the Senate. The constitutional question, which was formerly raised in regard to such service, was discussed at length in our report and we believe, as there stated, that the doubt, formerly expressed, has been removed by later judicial opinions.

We recommend the following:

DRAFT ACT

AN ACT REGULATING THE SERVICE OF CIVIL PROCESS UPON CERTAIN NON-RESIDENT DEFENDANTS

Chapter 227 of the General Laws is hereby amended by inserting after the words "section five," in the third line of Section 1, the words, "or five A," and by inserting after Section 5 the following new section:

Section 5A. When any individual not residing in this commonwealth shall engage in business in this commonwealth, in any action against such individual arising out of such business, service of process may be made by leaving a copy of the writ or other process with the person who at the time of service is in charge of such business, and any process so served shall be of the same legal force and validity as if served personally on such non-resident individual; provided, that at least thirty days before the return day thereof, a copy of such process together with a notice of such service sha'l be forthwith sent to such non-resident defendant by registered mail, return receipt requested.

An affidavit of compliance herewith, and the defendant's return receipt if received by the plaintiff, shall be filed in the case on or before the return day of the process, or within such further time as the court may allow. The court in which the action is pending shall order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action, and a defendant, while in the commonwealth for the sole purpose of defending such action, shall not be subject to service in any action or proceeding not arising out of business conducted by him within the commonwealth.

Reports Requested by the Legislature in 1948

This year the "subject matter" of ten bills, pending before the legislature, were referred to the Council with requests for a report as follows:—

House 1291 relative to appointment of attorneys in separate support proceedings (referred by Resolves Chap. 63).

House 1282 relative to fees for executors, administrators and attorneys (referred by Resolves Chap. 21).

House 770 relative to payments from estates of pledges for charitable purposes (referred by Resolves Chap. 21).

House 1641 relative to change of name (referred by Resolves Chap. 53).

Senate 266 relative to rights of way and other easements (referred by Resolves Chap. 51).

House 1452 relative to arrest without warrant for larceny of property worth less than $100 (referred by Resolves Chap. 12).

House 18 relative to extensions and other changes in mortgages of real estate by savings banks (referred by Resolves Chap. 13).

House 493 to clarify decrees of probate courts (referred by Resolves Chap. 14).

House 216 relative to detention in, or commitment to, hospitals for the insane (referred by Resolves Chap. 20).

House 486 relative to summary judgments on issues in which there are no disputed facts (referred by Resolves Chap. 6).

On these matters we report as follows:

House 486 "To Permit Summary Judgment on Issues in Which There Is No Dispute of Fact" (Referred by Resolves Chap. 6)

Section 59 of chapter 231 of the General Laws provides for advancement of actions for speedy trial in case of an affidavit by the plaintiff of no defense or affidavit by the defendant of no merit in the action. Section 59B provides for a summary judgment "in an action of contract where the plaintiff seeks to recover a debt or liquidated demand" if the plaintiff verifies the cause of action and his belief that there is no defense "unless the defendant by affidavit, by his own evidence or otherwise shall disclose such facts as the court finds entitle him to defend." This section, while frequently used for the collection of debts in the Municipal Court of the City of Boston, is simply a "one way street." A defendant can not proceed under it in an action which has no merit.

In other jurisdictions, notably in New York, Michigan and Illi-

nois and, since 1939, under the Federal Civil Rules, a more affective procedure has existed for avoiding the waste of time and money of the public and of litigants in unnecessary trials.

As pointed out elsewhere in this Report, the heavy public burden of expense of litigation in our courts is for the benefit of relatively few litigants. It does not seem to require argument that reasonable procedure should be provided to avoid waste. A party has a right to a trial of his case on the facts by a court or if he prefers, he has a constitutional right to a trial by jury, and, in either case, he has a right to a decision of questions of law which may arise in his case. It seems obvious that he has no right to put the public, or his opponent, to the expense and delay of a trial of a case in which there is no genuine dispute as to material questions of fact. In such cases his right is limited to a decision of questions of law by the court if there are any. The procedure for what is called a "summary judgment" is designed to screen from the mass of cases entered in court those cases in which there is no real dispute of fact to be tried, and thus to avoid waste of time and money for everybody.

As already explained, this procedure exists to a limited extent, for plaintiffs only, under section 59B. In other jurisdictions referred to, the procedure exists for both parties in almost any kind of legal proceeding.

House 486, referred to the Council for a report, would adapt such procedure to our Massachusetts practice much less broadly than in other jurisdictions, being limited to "actions of contract," but not as limited as section 59B, and being also open both to plaintiffs and defendants instead of being a "one way street."

This procedure in the Federal courts, is shown by the notes to Federal Rule 56 (Annotated Rules pages 271–272) was adopted in that rule in the light of the effective experience with such rules in New York, Michigan, Illinois and elsewhere. In the third report of the Judicial Council of New York in 1937 (on page 30) the procedure was referred to as "noteworthy for its marked contribution to the cause of speedy justice and the alleviation of the economic waste of unnecessary and protracted litigation," and figures were given showing the extent of its use in that state. In the case of *Doehler Metal Furniture Co., Inc.* vs. *U. S.* 149 F. 2nd 120 (1945), the Court of Appeals for the second Federal circuit, while pointing out "that trial judges should exercise great care in granting motions for summary judgments" and that "a litigant has a right to a trial where there is the slightest doubt as to the facts, and a denial of that right is reviewable" although "refusal to grant summary judgment is not reviewable," added that "such a judgment wisely used is a praiseworthy, timesaving device."

House 486 is based on Federal Rule 56. We think certain added

words are advisable and that a proviso should be added that the procedure should not apply in suits against an executor or administrator for alleged liability of the deceased person, because of the possible, or probable, lack of information available to the representative of the estate as to the actions of the deceased, which might place the estate at a disadvantage under such procedure as compared with a living defendant (cf. *Morris Plan Co.* vs. *McCarthy* 295 Mass. 597).

With the changes suggested we recommend the following draft act, which is House 486 with our suggested additions printed in italics.

DRAFT ACT

Section 59 of chapter 231 of the General Laws, including the caption thereof, is hereby stricken out and the following section and caption substituted therefor:

MOTIONS FOR SUMMARY JUDGMENT

SECTION 59. In any action of contract, *except an action against an executor or administrator for liability of the deceased,* at any time after the completion of the pleadings counsel for either party may file an affidavit that in his belief there is no genuine issue of *material* fact *but only questions of law* in connection with all or some part of the action, or of some issue determinative thereof, and move for an immediate entry of judgment thereon. Said motion may be accompanied by affidavits on personal knowledge of admissible facts as to which it appears *affirmatively* that the affiants would be competent to testify. The facts stated in the accompanying affidavits shall be taken to be admitted for the purpose of the motion unless within twenty-one days, or such further time as the court may order, contradictory affidavits are filed, or the opposing party shall file an affidavit showing specifically and clearly reasonable grounds for believing that contradiction can be presented at the trial but cannot be furnished by affidavits. Copies of all motions and affidavits hereunder shall be furnished upon filing to opposing counsel. If admissions in the pleadings, interrogatories, admissions under chapter two hundred and thirty-one section sixty-nine, stipulations or *affidavits* hereunder *show affirmatively,* that except as to the amount of damages no genuine issue of material facts exists *and that there is nothing to be decided except questions of law,* an order for default, or judgment for the moving party, shall forthwith be entered if he shall be entitled thereto as a matter of law, subject to an assessment of damages, if required. If affidavits hereunder are filed in bad faith, the offending party may be adjudged guilty of contempt, and in any trial any affidavit filed by any party, as herein provided, may be given in evidence against him.

SECTION 59A of said chapter is hereby amended by adding at the end thereof the following:*

"If, in an action removed by the defendant from a district court, the court is satisfied, upon an inspection of the declaration, that the plaintiff seeks to recover solely for his personal labor, with, or without interest, the court shall, upon motion, advance such action for speedy trial."

* This change is merely a transfer of a provision in the present §59 to §59A, where it belongs.

House 1452 to Allow Arrest Without a Warrent for Larceny of Property Worth Less than $100

By Resolves chapter 12 the following bill was referred to the Council:

"Chapter 266 of the General Laws is hereby amended by inserting after section 30, inserted by section 2 of chapter 282 of the acts of 1945, the following new section:

"*Section 30A*. Sheriffs, deputy sheriffs, constables and police officers may without a warrant arrest any person found in the act of committing larceny under section thirty, regardless of the value of the property stolen, and may keep such person in custody in jail or otherwise for not more than twenty-four hours, Sundays and legal holidays excepted, until complaint may be made against him for such offence."

The reason for this proposal, as explained to the Council by the draftsman of the bill, is that it is generally believed that, under the law as it stands today, a police officer runs the risk of being sued for false arrest if he arrests, without a warrant, a person who commits larceny, even in his presence, if the property stolen does not exceed the value of $100. An example submitted to us is that of an officer seeing D steal an article worth $5 in a department store; the officer could take the article away from D and restore it to the owner, but he could not lawfully arrest D nor could he lawfully force D to identify himself so that a warrant, or summons, could be issued against him. This statement refers to a case where the store is open for business and not to the offense known as larceny in a building which would be a felony regardless of the value of the property stolen.

It is stated as the reason for this situation, that, at common law, an officer can arrest without a warrant only for felony, or for a misdemeanor if the misdemeanor amounts to the breach of the peace.

G. L. 274 §1 (First adopted in 1852) provides that

"A crime punishable by death or imprisonment in the state prison is a felony. All other crimes are misdemeanors."

This statute was passed following a suggestion in an opinion in *Comm.* v. *Carey*, 12 Cushing 246.

Section 30 of chapter 266 as amended by section 2 of chapter 282 of the acts of 1945 (which the proposed bill refers to) provides that larceny, if the value of the property stolen exceeds $100 *may* be punished by imprisonment in the state prison for not more than 5 years. This is a felony under the statutory definition just quoted. If the value of the property does not exceed $100 no sentence to the state prison is authorized. Therefore, it is not a felony; therefore, as the obvious argument goes, the common law rule as to arrest without warrant, which is still in force unless modified by statute (See

Comm. v. *Gorman* 288 Mass. 294 at p. 297, citing *McLennon* v. *Richardson* 15 Gray 74 and *Comm.* v. *Ruggles* 6 Allen 588, at 590; see also *Curtz* v. *Moffet* 115 U. S. 487) applies and a warrant is needed to authorize the arrest, at least, unless the circumstances involve a breach of the peace.

The common law rule has been modified by statute in a number of special misdemeanors committed in the presence of an officer although not amounting to a breach of the peace. As examples, see violation of alcoholic beverage laws G. L. chapter 138; promotion of anarchy G. L. chapter 264; violation of certain by-laws under chapter 272 sec. 259; cruelty to animals, G. L. chapter 272 §77, 81, 82; delinquent children under G. L. chapter 119 § 52; dog and cock fighting G. L. chapter 272, § 89, 90 and 91; violation of election laws G. L. 56 §67; illegal possession of explosives G. L. 148; gaming under certain circumstances G. L. chapter 271 §2; drunkeness G. L. 272 §44; violations of motor vehicle laws G. L. chapter 90; spitting, etc., etc.

In an article on the law of arrest by Prof. Sam Bass Warner in the American Bar Association Journal for February, 1940, appears the following statement:

> "In states like Massachusetts in which officers have no right to arrest without a warrant for a misdemeanor not amounting to a breach of the peace, even though it is committed in their presence, they regularly violate the law by arresting everybody whom they see committing petit larceny.
>
> "Suppose that an officer sees a thief take an overcoat out of a parked automobile. The law of Massachusetts allows him to take the coat away from the thief, but, unless the coat is worth over $100, he has no right to arrest the thief without first obtaining a warrant. Yet I have seldom met an officer who said he would obey that law or that he did not think that he would deserve to be punished by his superiors, if he did. Clearly, the creation of police departments, sanitary jails, facilities for bail and even for release on one's own recognizance, have eliminated the justification for limiting arrests for misdemeanors to those involving a breach of the peace."

Whatever may be the rule as to misdemeanors generally, we respectfully question the accuracy of so sweeping a statement of the law of arrest as applied to the offense known as "larceny," even if the value of the property is less than $100, if the theft is committed in the presence of the officer. At common law as stated by Blackstone (Commentaries Vol. IV p. 229) "Grand Larceny" was stealing goods above the value of 12 pence. Under that value, the crime was "petit larceny." Both came under the definition of "simple larceny" which is defined as "the feloneous taking and carrying away of the personal goods of another." This and other references to the English common law are cited in Dane's "Abridgement of American Law" vol. 7 p. 163 (published in 1824 as stating the American law as follows:

"What is larceny or theft. This crime is well described in the indictment, which charges that the deft. did feloniously take, steal, and carry away one piece of cloth &c. of the goods and chattels of C.D. to his damage &c. Larceny is simple; this is the felonious taking and carrying away another's personal goods. Or it is mixed or compound; this has all the properties of simple larceny, but is also accompanied with taking from one's house, shop, or person."

In England at the beginning of the 19th century most felonies were punishable with death including stealing from the person above the value of a shilling (See "A Century of Law Reform" p. 45). By chapter 143 of the Act of 1804 stealing, regardless of amount, carried a possible penalty of varying terms in state prison as explained in the notes of the commissioners on the Revised Statutes of 1836 to chapter 126 and, at their suggestion, in sections 14, 16, 17 of that chapter, the penalty was a possible five years in state prison and, if more than $15 and not more than $100, a possible 1 year. Larceny seems to have been a felony regardless of penalty, both before and after the act of 1852, already referred to, until the end of the century when by act the possibility of a sentence to state prison was omitted if the value did not exceed $100. It seems obvious from the history of the statutes that the omission of the states prison sentence was for the purpose of reducing the punishment and, prior to the act of 1911, bringing larceny of less than $100 within the final jurisdiction of the district courts, and that it was not the intention of the legislature to alter the common law rule that an officer might arrest, without a warrant, a person stealing in his presence. This view is also supported by the fact that it may be impossible for an officer who sees a man steal something to know whether the value of the property is more or less than $100 and, without express and unmistakable legislative language, it seems difficult to attribute to the legislature an intention to thus restrict the officer's authority and duty to arrest, and subject him to the risk of false arrest and thus leave the community unprotected against such thefts.

We think it only fair to the police that this view should be publicly stated in view of the statements and impressions to the contrary already referred to. But we do not think that the law should be left in this uncertain state in the minds of the police and we, therefore, recommend an amendment which we believe to be declaratory of the law of arrest. We do not think that the amendment should be made to chapter 266 as proposed in the bill referred to and we think the amendment should be shorter and more limited in scope than the words proposed. We see no reason for extending the rule to cover such circumstances as those in *McDermott* v. *W. T. Grant Co.* 313 Mass. 736 where the officer did not see what happened but relied on the unreliable say-so of somebody else.

We recommend the following:

DRAFT ACT

Section 28 of chapter 276 of the General Laws is hereby amended by inserting after the word "process" in the second line thereof, the words "may arrest without the issuance of a warrant, and detain a person found by him in the act of stealing property in his presence regardless of the value of the property stolen, and" so that said section shall read

"Arrest for Misdemeanors. Any officer authorized to serve criminal process may arrest without the issuance of a warrant and detain a person found by him in the act of stealing property in his presence regardless of the value of the property stolen, and may arrest and detain a person charged with misdemeanor, without having a warrant for such arrest in his possession, if the officer making such arrest and detention shall have actual knowledge that a warrant then in full force and effect for the arrest of such person has in fact issued."

House 1291 to Authorize Appointment of Attorneys by a Probate Judge to Investigate and Defend in Proceedings for Separate Support and Custody of Children (Referred by Resolves, Chapter 63)

House 1291

"Chapter 209 of the General Laws is hereby amended by inserting after section 34 the following new section:

"*Section 34A*. The judge of a probate court wherein any petition under section thirty-two is pending may appoint an attorney to investigate and report to the court in relation thereto and may direct such attorney, or any other attorney, to defend the petition. The attorney may be appointed either before or after a decree has been granted thereon. His compensation shall be fixed by the court, and shall be paid by the county where the petition is pending, together with any expenses approved by the court, upon certificate by the judge thereof to the county treasurer. The state police, local police and probation officers shall assist the attorney so appointed, upon his request."

This bill would extend to proceedings for separate maintenance and custody of children, the same authority of the court which now exists in divorce cases by section 16 of chapter 208 of the General Laws which reads:

§16 "Investigation of Divorce Case. — Any justice of the superior court or judge of a probate court wherein any libel for divorce is pending may appoint an attorney to investigate and report to the court in relation thereto and may direct such attorney, or any other attorney, to defend the libel. The attorney may be appointed either before or after a decree of divorce nisi has been granted, and may enter objections to such decree nisi becoming absolute in the same manner as the libellee. His compensation shall be fixed by the court, and shall be paid by the county where the libel is pending, together with any expenses approved by the court, upon certificate by a justice or the judge thereof to the county treasurer. The state police, local police and probation officers shall assist the attorney so appointed, upon his request."

Before discussing the proposed bill, the figures as to the volume of divorce and separate support cases should be considered. The tabulated reports of the registers of probate for the years ending December 31, 1946 and 1947 are as follows as shown by the tables on pp. 92 of our 23rd Report and p. 92 of this Report.

	1946		*1947*	
	Original Entries (New cases)	*Decrees Nisi*	*Original Entries (New cases)*	*Decrees Nisi*
Barnstable	205	175	178	134
Berkshire	494	395	345	243
Bristol	1,395	1,135	1,012	780
Dukes	21	23	22	18
Essex	1,563	1,121	1,134	1,041
Franklin	135	121	111	83
Hampden	1,541	1,031	1,097	810
Hampshire	60	29	43	28
Middlesex	3,144	2,294	2,379	1,884
Nantucket	15	10	11	5
Norfolk	1,092	784	824	618
Plymouth	777	515	538	487
Suffolk	3,319	1,985	2,572	1,952
Worcester	1,880	1,420	1,435	1,018

The figures on separate support, desertion and custody were as follows:

	1946			*1947*		
	Sep. Support	*Desertion*	*Custody*	*Sep. Support*	*Desertion*	*Custody*
Barnstable	7	3	2	3	2	1
Berkshire	33	12	12	29	15	15
Bristol	100	18	9	83	9	5
Dukes	0	0	0	1	–	–
Essex	75	23	12	84	11	7
Franklin	2	3	2	6	–	–
Hampden	65	3	23	63	3	13
Hampshire	1	0	0	4	–	1
Middlesex	162	15	49	166	18	30
Nantucket	0	0	0	1	–	–
Norfolk	86	9	12	110	7	7
Plymouth	30	3	5	39	7	7
Suffolk	340	4	42	270	13	38
Worcester	183	8	8	182	12	4

The only ground on which the present section 16 of chapter 208 relative to divorce cases above quoted and this proposed bill in regard to separate support cases are based seems to be the public interest in the marriage status and the interests of the children if there

are any. There are great differences of opinion in the community as to the exact extent and nature of this public interest. There are between 8000 and 9000 attorneys admitted to practice in Massachusetts with constant additions every year. How many of them are qualified to "investigate and report" on family situations from the point of view of the public interest, nobody knows. When the number of divorce cases tabulated above is considered, most of which are uncontested, it seems obvious that the courts under the present section 16 have not, in most cases, considered, the services of an attorney, at the expense of the county, likely to be of sufficient assistance to warrant such appointments. The whole subject of divorce, custody of children and domestic problems is under discussion throughout the country.

A very considerable number of non-support cases are brought as criminal cases in the district courts under the uniform desertion act which provides a much fuller opportunity to the court to get the facts because ever since 1911, when that act was passed, the privilege of husbands and wives, which still exists in other courts and other proceedings, even in the same court, of not testifying as to private conversations so that the court is deprived of the most direct evidence, has not applied in these non-support cases in the district courts. The exclusion of such evidence still does apply in such cases in the Probate Courts. In the district courts, a very large amount of money is collected for the family in these non-support cases with the assistance of the probation officers. The probate courts have no probation officers. Competent probation officers with the training, personality and temperament adapted to such work are not always easy to find. The kind of work contemplated by the attorneys who might be appointed by the Probate Courts under the proposed act would seem to be mainly that of competent probation officers.

We have pointed out in this Report, pp. 20–33, the constant increase in the cost of the administration of justice, both to the Commonwealth and to the counties. If investigating attorneys were to be appointed in all divorce cases and in all separate maintenance cases pending in the Probate Courts at the county expense, it is obvious that the burden on the counties would be very heavy. Such burdens should not be imposed without strong reasons to believe that the public advantages would justify them. In spite of the fact that the authority to appoint such attorneys now exists in divorce cases under section 16 of chapter 208, we do not believe that the supposed advantages of extending that authority to separate support cases such as to justify such extention at added and uncertain expense to the counties.

Recommendation

We believe that instead of paying from the public treasury, the

expense of such investigations as are suggested, the probate courts would receive far more assistance if the law which has been on the statute books since 1911 for such proceedings in the district courts enabling them to get the facts from the married person (as the District courts are doing every day) were extended to the Probate Courts in these cases as recommended in our 22nd Report for reasons stated pp. 69–76. There seems to be no reason why there should be a different rule of evidence in the same kind of proceeding in two different courts such as that explained on p. 69 of our 22nd Report.

We do not recommend the passage of H. 1291. We do recommend the extention to the Probate Courts of the rule which has existed in the District courts by legislative authority ever since 1911 and submit the following draft, the wording of which is taken from the act of 1911 (now section 7 of chapter 273 of the General Laws) with slight abbreviation.

DRAFT ACT

In a proceeding under section 32 of chapter 209 of the General Laws both husband and wife shall be competent witnesses to testify against each other to any relevant matters including the fact of their marriage and the parentage of the child; provided that neither shall be compelled to give evidence incriminating themselves. In no proceedings under said section 32 shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply.

CHANGES IN TERMS OF MORTGAGE LOANS OF SAVINGS BANKS — HOUSE 18 (*Referred with the 5th recommendation of the Commissioner of Banks in his report, House 13, by Resolves Chapter 13*)

The bill was introduced by the Commissioner of Banks for the reason stated in his report of recommendations (House 13) as follows:

"Existing laws offer a sufficient diversification of the type of loans that a savings bank may originate to permit a bank accommodating nearly every borrower who applies for a loan. Frequently, however, after the respective rights and obligations of the mortgagor and mortgagee have been fixed by contract a mortgagor's situation changes to the point where a type of loan contract differing materially from that which he originally secured would be better fitted to his needs. Because a bank and mortgagor in such a situation can agree to discharge the existing mortgage and replace it with another upon some other authorized basis, and because it seems undesirable to put borrowers to the expense involved in checking titles and recording documents that such a step entails, if the same result can be achieved in some other proper manner, I recommend that in those cases where the ratio of loan balance to value of mortgaged premises warrants a change in terms to some basis authorized by law other than that upon which the contract was originated, the parties be enabled, by recording an extension or agreement, to change the terms of the contract in a manner that will satisfy the other legal requirement.

"It may be that such a right exists by common law. If we could be sure this was so, there would be no need for legislation such as is now recommended. However, in the absence of decisions declaring this to be the common law, I consider it desirable that the respective rights of the parties to a mortgage in this particular regard be more clearly defined. The accompanying draft of legislation will accomplish this purpose."

We see no objection to the purpose of the Commissioner's proposal. Under the latest amendment of Section 54 of the Savings Bank law, by Chapter 98 of 1947, savings banks are authorized to make loans on real estate mortgages up to 60 per cent of the valuation and, upon differing and increasing provisions for amortization up to 70, 75 and 80 per cent, as set out in detail in the various paragraphs of Section 54. An 80 per cent mortgage may run for not more than 20 years, may not exceed $12,000 and is to be made on requirements of fixed monthly payments of principal, etc.

As pointed out by the Commissioner, the situation may change during the term of a mortgage and, as an illustration, assuming that an 80 per cent mortgage such as that above described has been reduced by monthly payments so that the balance does not exceed 60 per cent, the borrower and the bank may wish to change the terms of the mortgage note to make it a shorter term, or to change it to a demand note eliminating the detailed provisions for monthly payment of principal. At present, in view of the fact that the provisions in Section 54 are strictly construed, it appears to be doubtful, in the minds of some conveyancers, bank inspectors and others, whether such new arrangements can be made without discharging the original mortgage and going through the machinery of a new application and a new note and mortgage and title report, including the cost, and adding to the accumulation of unnecessary waste paper for permanent storage, at the public expense, in the registry of deeds.

It is probably true, as suggested in the statement of the Commissioner, that such rearrangements as are contemplated may be made without a statute and without going through the process of making a new mortgage simply for the purpose of shifting a mortgage from one of the authorized classes into another authorized class of a smaller percentage of the property valuation and a less extended period for payment. The opinion in *Siegal* v. *Knott* 316 Mass. 526 seems to sustain this view. On the other hand, the statutes in regard to the mortgage investments of savings banks have two aspects, first, the primary purpose of safety, and, second, as definite guiding rules for bank inspectors, as well as conveyancers who advise the savings banks or borrowers. It is in the interest of the banks and their depositors, as well as of borrowers, that uncertainties be reduced to a minimum in the minds of everyone concerned and express recognition of the legality of such changes, as are referred to in the

proposed act, therefore, serve a useful purpose. The fact that the act may be declaratory of existing law is no objection to it. We have many such statutes which have been passed to secure greater certainty. The proposed statute resembles in purpose the somewhat similar provisions in regard to cooperative bank mortgages in Sections 35A and 36D of Chapter 170 of the General Laws.

We think certain additional clauses are needed to accomplish the purpose of the Commissioner of clarifying the law. While we assume, without citation of authority, that changes in the note and mortgage could not, today, affect the rights of holders of junior mortgages or encumbrances under Massachusetts law, it would be wise to add a declaratory proviso to that effect. We, also, think that a clause should be added providing that attachments of the property of the original mortgagor, or of a subsequent holder of the equity of redemption, made *after the act takes effect*, should be subject to the revision of the terms of the note and mortgage authorized by the act. Unless this is made clear, some alleged creditor would be in a position to squeeze the mortgagor, or the subsequent owner of the equity, unjustly, even though the proposed revision of terms increased the value of the property attached.

In view of the fact that an extension of a mortgage by the grantee of the equity of redemption, without the original mortgagor's assent, would release him from his liability to the bank as surety on the note, we think there should be an expressed proviso in the revision agreement that the liability of the original maker of the note as surety is released if the arrangement is made without his assent with a subsequent grantee. The reason for this proviso is to protect the savings bank from being caught in any inadvertent release of a surety if that additional security is considered advisable. As between the bank and the original maker of the note and mortgage such a question would not arise.

With such additions, in order that the situation may "be more clearly defined," as the Commissioner suggests, we recommend the following draft act, being the Commissioner's draft with our additions printed in italics.

DRAFT ACT

Clause first of section 54 of chapter 168 of the General Laws is hereby amended by adding at the end of subdivision (*g*), as appearing in chapter 98 of the acts of 1947 the following new paragraph:

With the approval of the board of investment of such corporation, at the request *of the maker of the mortgage note and mortgage* of the owner of the equity of redemption and upon certification by said board that the then balance of the amount due upon a loan written under either subdivision (*a*), (*e*), (*e*½) or (*g*) does not exceed the percentage of the value of the mortgaged premises mentioned in some other one of said subdivisions, the terms of the note and mortgage may

be changed by a recorded agreement, or extension, *with the maker of the note and mortgage or with the subsequent holder of the equity of redemption with the written assent of the maker of the note and mortgage, or without his assent, if his liability and assurity on the note is waived expressly in the agreement or extention*, evidencing the change and new payment terms, to correspond with the provisions of such other subdivision, without prejudicing the security of the mortgage, and both note and mortgage shall continue to be held by the corporation as security for the balance remaining unpaid. After being so extended or changed, the loan shall continue to be subject to subdivision (*c*) or to the last foregoing paragraph hereof, as the case may be, *provided, however, that nothing herein shall impair the right of the holder of a junior mortgage or encumberance on the mortgaged property to realize upon his security unless he shall have consented in writing to the new agreement or extention; provided further, that any attachment placed upon the property of the owner of the equity after the effective date of this act shall be subject to the terms of the new agreement and terms authorized by this act without notice to or assent of the attaching creditor.*

Senate 266, Relating to Rights of Way and Easements (*Referred by Resolves, Chapter 51*)

Senate 266 reads as follows:

"Section 2 of chap. 187 of the Gen. Laws is hereby amended by adding at the end thereof the following: No such right or privilege of way or easement shall be so acquired if it can be established that the person claiming such right or privilege of way or easement has other suitable means of ingress to or egress from his land. Petitions for determination of rights under this section shall be brought under chapter one hundred and eighty-five."

In order to understand this proposal in its relation to the land law of Massachusetts, it is necessary not only to refer to the present section 2 which this bill would amend, but also section 3 of chapter 187.

The present section 2 reads as follows:

"No person shall acquire by adverse use or enjoyment a right or privilege of way or other easement from, in, upon or over the land of another, unless such use or enjoyment is continued uninterruptedly for twenty years."

Section 3 provides statutory methods of preventing the acquisition of such an easement as follows:

"Prevention of Easement by Notice. — If a person apprehends that a right of way or other easement in or over his lands may be acquired by custom, use or otherwise by any person or class of persons, he may give public notice of his intention to prevent the acquisition of such easement, by causing a copy of such notice to be posted in a conspicuous place upon the premises for six successive days, and such posting shall prevent the acquiring of such easement by use for any length of time thereafter; or he may prevent a particular person or persons from acquiring such easement by causing a copy of such notice to be served upon him or them as provided by law for the service of an original summons in a civil action. Such notice from the agent, guardian or conservator of the owner of land

shall have the same effect as a notice from the owner himself. A certificate by an officer qualified to serve civil process, that such copy has been served or posted by him as above provided if made upon the original notice and recorded with it, within three months after the service or posting, in the registry of deeds for the county or district in which the land lies, shall be conclusive evidence of such service or posting."

The substance of these sections, with some variation of phraseology, has been on the statute books for more than a century. (See Revised Statutes of 1836, chapter 60, sections 27 and 28). They are in addition to common law methods of preventing an easement, such as blocking up the way. (See *Brayden* vs. *N.Y., N.H. & H. R.R. Co.* 172 Mass. 225; *Powell* v. *Bragg*, 8 Gray 441; *Bucella* v. *Agrippino*, 257 Mass. 483, 487; Partridge "Deeds, Mortgages and Easements). The common law in regard to easements, such as ways by uninterrupted use, is much older than the statute and even than the original settlement of Massachusetts. As was pointed out by the late Judge Davis of the Land Court in an address shortly before his death, the 17th century settlers of Massachusetts adopted so much of the English common law as seemed to them needed and adapted to the conditions in the new country and one of the fundamental common law rights thus needed, and adopted in practice and adhered to ever since, was title by long uninterrupted possession. In the case of Browning petitioner (Davis "Land Court Decisions" 5 at pp. 7–8) he emphasized this view.

Ways or other easements acquired by prescription, or long uninterrupted use as of right, while they exist over land in the possession of another person, are nevertheless a part of this ancient background of title by user which is part of the common law of New England. Anyone familiar with Massachusetts, especially outside of the large cities, knows that lands are streaked with rights of way based on adverse use all over the Commonwealth, and that such use is still developing (except as to registered land) subject to the common law and statutory methods of stopping it. As most people and most titles never get into court, nobody knows how many of such easements exist, or are in the process of development, but there must be a great many of them.

The statutory proceedings for registration of titles by the Land Court after notice and examination do not allow easements to be acquired by prescription on land the title to which has been registered by decree of court, (see G. L. c. 185, §45–46). The reason for that, however, as part of the registration system, does not apply to unregistered land and registration is one method of preventing future rights based on use. We believe that the proposed bill would inject new and complicating issues and resulting confusion, and would also invite litigation to clog the courts and cause more trouble than any advantages which it might bring in particular cases.

We believe Senate 266 to be against the public interest and, therefore, we do not recommend its passage.

House 1641, Relative to Change of Name
(Referred by Resolves, Chapter 53)

This bill would amend section 12 of chapter 210 of the Gen. Laws. The present section 12, with additions proposed by H. 1641 printed in italics, follows:

> "*Section 12.* A petition for the change of name of a person may be heard by the probate court in the county where the petitioner resides. No change of the name of a person, except upon the adoption of a child under this chapter or upon the marriage or divorce of a woman, shall be lawful unless made by said court for a sufficient reason consistent with public interests *and satisfactory to it. If a person having the same surname as that desired by the petitioner shall appear and object, the question whether the surname desired is one which is so uncommon or otherwise distinguished or otherwise well known in the community in which the petitioner lives that its use by the petitioner will cause or tend to cause mistaken or unwarranted identification with or relationship to particular persons or families legally bearing such surname, shall be considered a question of public interest.*"
>
> "*No petition to change a surname shall be entertained if, in the opinion of the judge of probate, it appears that the principal reason or purpose of such petition is to obliterate, conceal or hide the family lineage or past record of the petitioner or to obtain some business, commercial, monetary or social advantage.*"

A bill relating to change of name, referred to the Council in 1947, was fully discussed in our 23rd Report in that year (pp. 14–15). We did not recommend that bill which proposed to add to the existing statute above quoted the words "and satisfactory to said court." As we pointed out, those words were in the statute before 1920, but were omitted when the General Laws were enacted. The history of the words was quoted in our report from the opinion of the Supreme Judicial Court in the case of *Merolevitz*, 320 Mass. 448, 70 N.E. 2nd. Our report of last year against the restoration of the words, then suggested, applies to the proposal in H. 1641 to add the words "and satisfactory to it" in the proposed act.

H. 1641 goes much farther than last year's proposal by defining certain aspects of a proposed change of name to be considered by the court judicially as a part of the "public interest," and, further, to prohibit a change if it appears that the principal reason is concealment, etc. "in the opinion of the judge of probate."

As to these proposed additions, we think, in the first place, that the clause "in the opinion of the judge of probate" is objectionable for the same reason that the earlier words already referred to ("satisfactory to the court") are objectionable, because they appear to invite the merely personal views of the judge rather than the exercise of a judicial discretion and decision as to the "public inter-

ests." As to the rest of the proposed addition, defining aspects of the "public interests" for consideration by the court, we, again, call attention to the opinion of the court referred to above in which it was pointed out that "at common law a person may change his name at will without resort to legal proceedings by merely adopting another name, provided that this is done with an honest purpose." This common law rule is not abrogated by the present statute.

In the opinion referred to, the court says:

> "We assume, in view of the wording of our statute (G. L. Ter. Ed. c. 210, s. 12) that it provides the only method by which one can change his name with legal effect. But it does not follow that one may not assume or use another name without resort to the statute if such use is for an honest purpose. In numerous cases decided after the passage of the statute it has been recognized that without compliance with it one may use another name for transacting business, making contracts, instituting or defending law suits, and acquiring and transferring title of property, where such use is not tainted by fraud."

Section 12, therefor, here, as in other jurisdictions, as stated by the court, "is merely in aid of the common law and does not abrogate it." For many purposes of "business, commercial, monetary or social advantage" referred to at the end of the proposed amendment, a person can adopt, and use, some other name than his own without the aid of any statute so long as "such use is not tainted by fraud."

The question raised by the proposed bill appears to be, therefor, whether the present wording of section 12 is so general in its reference to "public interests" as to encourage and aid persons to secure more advantages of some kind by judicial decree than are already provided by the common law, if the selection of the new name applied for is such as to "cause or tend to cause mistaken or unwarranted identification with or relationship to particular persons or families legally bearing such surname," if persons appear and object to the proposed change; or if the judge finds that the principal purpose of the petition is to conceal something. When a particular surname is a very common one no one is likely to object to its adoption unless it is so specifically connected, by initials or by a given name, as to indicate a purpose to secure some advantage from the name of some specific individual without his consent.

Our attention has been called to an "apparent" but not "actual inconsistency" between the common law as stated by the court and the second sentence of section 12 of chapter 210, above quoted, which reads:

> "No change of the name of a person, except upon the adoption of a child under this chapter or upon the marriage or divorce of a woman, *shall be lawful* unless made by said court for a sufficient reason consistent with public interests."

These words and the very general words "public interests" are said to cause uncertainty in the minds of some judges and members of the bar as to the law, but there is no inconsistency.

While the opinion in the Merelovitz case states that "at common law a person may change his name at will — provided that this is done for an honest purpose," and that the statute "is merely in aid of the common law," it does not decide that a man can have his name changed at will by court decree even "for an honest purpose," or when there is no evidence that it is not "for an honest purpose." The decision is limited to the facts and the words of the statute "consistent with public interests." The facts were stated (pp. 448–449) that Merelovitz had done business, and was generally known by his friends and others for 15 years or so, as "Merrill" (ever since graduating from school) and was an officer of an oil company, and had his bank account, as Merrill, and his brother's name had been changed to Merrill by the Hampshire Court, but he was married and his children's birth records were recorded as "Merelovitz." The probate court found, because of these marriage and birth records, that his use of the name "Merrill" was not lawful under the sentence above quoted from section 12. The Supreme Judicial Court reversed that finding and decided that "the proper conclusion on the facts found" was that the "reasons" for change were "sufficient and consistent with public interests."

It seems that the statute, when read in the light of the decisions, means that a petitioner for change of name, like other plaintiffs or petitioners, has the burden of proving "a sufficient reason" for the particular name sought by decree of court, and a mere desire for that name, especially if protesting respondents appear, is not necessarily enough to sustain the burden for the petitioner without evidence of previous common law use of the name, as in the Merelovitz case, or reasonable grounds for the desire. In other words, the statute contemplates a judicial proceeding for the exercise of a "judicial discretion" and not the mere "rubber stamping" of a desire.

Such being our understanding of the law, the circumstances and considerations referred to in the proposed addition to the statute may be material evidence and argument for the consideration of the court, and we think they should continue to be so regarded and should not be inserted in the statute in manner suggested. For these reasons we do not recommend the passage of H. 1641.

Fees for Executors, Administrators and Their Attorneys, House 1282. (Referred by Resolves, Chapter 21)

This bill would provide

Section 1. *Fees of Executors.* — An executor, when no compensation is provided by the will, or he renounces all claim thereto, or the administrator and/or his attorney shall receive fees upon the amount of the estate accounted by him as follows: for the first one thousand dollars, at the rate of fifteen per cent; for the next nine thousand dollars, at the rate of eight per cent; for the next thirty

thousand dollars, at the rate of four per cent; and for all above fifty thousand dollars, at the rate of two per cent.

If there are two or more executors or administrators, the compensation shall be apportioned among them by the court as determined according to the services rendered by each.

SECTION 2. *Fees of Attorney for Executor or Administrator.* — An attorney for an executor or administrator shall be allowed out of the estate, as fees for conducting the ordinary probate proceedings, the same amounts as are allowed by the previous section as fees to executors and administrators, and such other amounts as the court may deem just and reasonable for extraordinary services, such as sales or mortgages of real or personal property, contested or litigated claims against the estate, the adjustment and payment of extensive or complicated estate or inheritance taxes, litigation in regard to the property of the estate, the carrying on of the decedent's business pursuant to an order of court and such other litigation or special services as may be necessary for the executor or administrator to prosecute, defend or perform.

SECTION 3. *Fee of Special Administrator.* — The fee of a special administrator shall be fixed by the court but shall not exceed the amount as provided for an executor or an administrator.

SECTION 4. *Fee of Attorney for Special Administrator.* — The fee of the attorney for a special administrator shall be fixed by the court, but in no case will it exceed the amount as provided for in section one of this chapter for an attorney for an executor or administrator.

This bill would establish fixed rates of compensation for an executor or an administrator "and/or his attorney" for the ordinary services involved in the settlement of estates regardless of variations in the extent of such ordinary services in different estates unless the variation in a particular estate was considered by the court as within a class called "extraordinary" for which additional compensation should be awarded to the attorney.

These fixed rates of compensation would apply throughout the Commonwealth and would be mandatory on the Probate Courts in every county. Under the present law executors, administrators and their attorneys are entitled to reasonable compensation under the particular circumstances as determined by the court or by agreement of the persons interested in the estate, and, where there is no disagreement, the court ordinarily approves the charges.

The history of this subject in Massachusetts is as follows. Prior to 1836 when the Revised Statutes were enacted, the rule of reasonable compensation now existing as approved by the Court in the exercise of its judicial discretion, was enforced. The commissioners on the Revised Statutes in 1835, in their note to their proposed section 8 of chapter 67 of that revision, reported as follows:

"The compensation for the services of executors and administrators is not at present fixed by law, but is regulated by the discretion of the judges of probate. By the late revised code of New York, the compensation is established at the

rates proposed in this section. If the legislature should think fit to make any regulation on this subject, they will of course alter the allowance, if necessary, to suit their own views; or, if it should be thought best to leave a discretionary power in the probate court, to vary the compensation according to the varying circumstances of different cases, this section may be so altered as to fix only the maximum of compensation. This provision, if adopted, will not prevent any agreement between executors or administrators, and heirs, for a compensation either greater or less than is here prescribed."

On this recommendation section 8 of chapter 67 was adopted as follows:

"*Section 8.* Executors and administrators shall be allowed the following commissions, upon the amount of the personal estate collected and accounted for by them, and of the proceeds of real estate sold under an order of court for the payment of debts, which shall be received in full compensation for all their ordinary services; that is to say:

"For the first thousand dollars, at the rate of five per cent:

"For all above that sum, and not exceeding five thousand dollars, at the rate of two and one half per cent: and

"For all above five thousand dollars, at the rate of one per cent.

"And in all cases, such further allowances shall be made, as the court shall consider just and reasonable, for their actual and necessary expenses, and for any extraordinary services, not required of an executor or administrator, in the common course of his duty; provided, however, that when provision shall be made by the will of the deceased for compensation to any executor, the same shall be deemed a full satisfaction for his services, in lieu of the aforesaid commissions or his share thereof, unless he shall, by an instrument filed in the probate court, renounce all claim to such compensation given by the will."

This fixed statutory rule, after 2 years of experience under it, evidently was not considered satisfactory for it was repealed by chapter 144 of the acts of 1838 and the previous rule of reasonable compensation under the circumstances again came into operation and has continued ever since 1838. As to the operation of the rule of reasonable compensation it is stated in the third edition of Newhall's "Settlement of Estates" published in 1937 (section 241 p. 582) that the test is

"What the court thinks is just and reasonable under the circumstances, having regard to the size of the estate, the responsibility placed upon the executor and the administrator, and the amount of work involved."

In applying these tests in a practice, as stated also on page 582 in a footnote,

"Both judges and attorneys continue to rely more or less on the commission basis, but without any uniform rule. There is a fairly general agreement on 2½% of the personal property, increased in small estates and decreasing in the larger, but neither the dividing line nor the extent of the increase or decrease is uniform. Extraordinary services would be outside the regular commission. Inheritance tax officials also use a commission basis for determining the amount of compensation they will permit as a deduction." and on page 583

"The amount allowed by the inheritance tax officials is not material . . . The general question is one in which wide discretion is left to the court. If all the parties interested agree upon the compensation, the amount so agreed upon will, as a rule, be allowed by the court without questioning."

We believe that the rule of reasonable compensation under the circumstances of the case which has been the rule in Massachusetts ever since the 18th century, with the exception of the two years between 1836 and 1838 already referred to, is the wiser rule for the compensation of executors and administrators and that it should be left as it is. The question involves the administration of justice in the matter of such charges as between the executor and administrator and the persons interested in the estate and a wholesale rule in advance applicable to all estates regardless of the relative amount of work involved does not seem to us sound. There may be more "ordinary" services involved in an estate of $1,000 than are needed in an estate of $10,000.

The first section of the bill provides the fixed fees not only for the executor or administrator but "and/or" his attorney. In the first place, we do not believe that the "literary fraction" "and/or" should be used in a statute. (See M.L.Q. May 1948, p. 69.) Section 2 provides that the attorney shall be allowed out of the estate "for conducting the ordinary probate proceedings the same amounts as are allowed . . . as fees to executors and administrators and such other amounts as the court may deem just and reasonable for extraordinary services." The bill would therefore impose upon each estate two mandatory charges of equal amount both for the representative of the estate and for his attorney regardless of the relative amount of work involved for either of them. We do not recommend this.

We are aware that it is not uncommon for local bar associations to establish schedules of "minimum" fees for various types of legal services for the guidance of the bar in the particular locality as suggestions of the professional men in that locality to assist the bar in explaining to their clients what are regarded as reasonable charges. Such schedules have been published by a number of county bar associations in Massachusetts as well as in other parts of the country. A tentative suggestive schedule prepared by a committee of the American Bar Association of such fees was printed by that association some years ago. It was never adopted by that association or by its house of delegates but was simply published for what it was worth as the opinion of a committee. Neither the Massachusetts Bar Association nor the Boston Bar Association have ever adopted a schedule of minimum fees.

The problem of determining what is reasonable compensation for lawyers' services and the services of others under the circumstances or particular cases, is not always an easy one. The problem may

differ in different localities. The overhead cost of well equipped lawyers' offices for the general practice of the constantly expanding range of work which lawyers are called upon to do, differs materially, in some counties in the Commonwealth, from the overhead in the larger cities and particularly in Boston where the greater bulk of the legal work of the Commonwealth is done. The cost of rent, clerical service, well equipped libraries for prompt reference in the larger offices, is greater. These factors have to be taken into consideration. Nobody likes lawyers' fees, but the general test of such fees, because of the different conditions and costs above referred to, differ in the different localities and have to be adjusted to the general state of mind of the local community of clients. The value of the services of some lawyers often differs from that of other lawyers. All these factors have to be taken into consideration and in spite of the difficulties of determining such a question, we believe that the standard of reasonable compensation rather than that of mandatory percentages fixed by wholesale in advance by statute, is the wiser and more just test. It is the test which is applied in regard to the charges of lawyers and others in other court proceedings and it is the test specifically recognized in the proposed bill as to everything except what are called "ordinary" proceedings which, as already stated, may vary materially in their "ordinary" character.

For these reasons, we do not recommend the passage of H. 1282.

HOUSE 770 TO AUTHORIZE THE PROBATE COURTS IN THEIR DISCRETION TO AUTHORIZE PAYMENTS FROM ESTATES OF PLEDGES FOR CHARITABLE PURPOSES, ETC. (REFERRED BY RESOLVES, CHAPTER 9)

The bill reads

HOUSE 770

The probate court on petition of any party in interest, if satisfied that such action will not be prejudicial to the interest of the estate, may authorize the payment by the executor, administrator, or trustee of a decedent's estate, to make payment of any part or the whole of any pledge made by the decedent prior to his death to any charitable, religious or community chest organization.

We do not recommend its passage. If the pledge or subscription made by the deceased was made under such circumstances, or has been acted upon under such circumstances, as to create a legal liability of the estate, it is payable now as a charge against the estate without the aid of any statute. Such pledges or subscriptions ordinarily are not legally binding for lack of what the law knows as "consideration" for the pledge, but they may, in some cases, become binding because of part performance in reliance upon them or because of what lawyers call "estoppel." A leading opinion on the sub-

ject is that of Chief Justice Gray in Cottage St., etc., *Church* v. *Kendall* 121 Mass. 528. The law in general is discussed in Williston on Contracts Revised Ed. Vol. I, §116 and 139; and in an article by Dean Pound on "Promised Advantages" in 59 Harvard Law Review 1.

If the circumstances are not such as to make the pledge legally binding on the deceased person, those interested in his estate may, and, doubtless, often do, wish to carry out the deceased's wishes and moral obligations and allow it to be paid, but, otherwise, the court cannot, and the legislature cannot authorize the court to give away, or authorize the executor or administrator to give away, the property of the estate in payment of pledges which are not legally binding if there is objection on the part of persons interested in the estate. The subject matter of the proposed bill is entirely different from the established, but very limited, equitable principle under which courts may deal with a lunatic's surplus income (discussed at length in our 19th Report, pp. 5–16).

HOUSE 216, RELATIVE TO THE COMMITMENT AND DETENTION OF PERSONS TO INSANE HOSPITALS (REFERRED TO THE COUNCIL BY RESOLVES CHAPTER 20)

This bill, H. 216, "the subject matter" of which was referred to the Council is a bill of sixteen sections containing rather elaborate changes of the procedure relative to the commitment and detention of persons in hospitals for the insane now provided for mainly in chapter 123 of the General Laws in Section 51 and following sections. Recently, since the reference to the Council, we have received a suggested redraft of the bill containing still more details of the proposed procedure with the statement that additional sections are still in preparation.

The problem of the fairest and wisest practice from the point of view of the interest both of the public and of the individual involved, in the matter of commitment and detention, is one which has been under discussion for a considerable period in different parts of the country. Obviously, it is a difficult problem. Two rather recent publications have appeared containing studies of the laws of the various states — one by Grover A. Kempf, the medical director in the U. S. Public Health Service and Associate Director of the Mental Hospital Survey in 1944 which contains a summary of the laws of all the states, and another nation-wide study of these laws by Franklin N. Flashner in the Yale Law Journal for August 1947 under the title "Analysis of Legal and Medical Considerations in Commitment of the Mentally Ill." We also received a letter from the late Judge Thompson of the Probate Court of Franklin County containing a

variety of suggestions of detail based on his experience and observation in dealing with the problems under the present statutes.

The history of hospitals for the insane in Massachusetts began in much the same way as it did in other states — the procedure for dealing with the mentally ill resembling, especially in the matter of detention and care, the procedure relating to criminal offenders. The state hospital for the insane was first established in Massachusetts in 1834 by chapter 150 of that year, the act, then passed, being reprinted, in substantially the same form, as chapter 48 of the Revised Statutes of 1836, which is the original basis of sections 50 and 51 of the present chapter 123 of the General Laws.

By that act the authority to commit was placed in the hands of the judges of probate in the several counties except Suffolk, and in that county the judge of the Municipal Court which was then a separate criminal court later abolished in the early 1840's. Since that time the authority to commit has been changed and, by section 50 of chapter 123, is now in the hands of a justice of the Superior Court in any county and any of the judges of probate for Suffolk County, the judge of probate for Nantucket County, or a justice, or special justice, of a district court except a justice of the Municipal Court of the City of Boston. It is noticeable that the authority to commit has never been given to a court as a court, but, always, to a justice, or special justice, of the courts mentioned. This practice is one subject of criticism. The only reason that we can think of for such a practice is the probable recognition that formal proceedings in open court in regard to the persons mentally ill may often be against the public interest because of the probability of making the patient worse, as well as subjecting him and his whole family to the humiliation and feeling of disgrace which is apt to result from such proceedings, however mistaken that feeling may be. At all events, as stated by Mr. Kempf, "it has taken time and effort for even a few states to develop commitment laws on the basis of early treatment without degrading the patient with a criminal taint." He also suggests that "with voluntary admission or the commitment procedure of New York, Rhode Island and Delaware neither the patient nor the family feel the humiliation that is concomitant with the court procedure in many states."

The matter of the care of the mentally ill has been a frequent, and is currently a, subject of public discussion, and the increase in the number of such persons under conditions of modern life has made the whole problem of dealing with them more difficult.

Those who are working on a revised draft of H. 216, including Mr. Flashner, the author of the article in the Yale Law Journal referred to, have submitted a summary of their views as to the defects of the

present law — Chapter 123, which contains more than one hundred sections. They say:

"This chapter is one of the most complicated in the General Laws, so disorganized and prolix that its recodification was recommended in a special report of the Attorney General in 1931 (House 1126 of 1932). A thorough going consideration of it would require much time and care. It contains many procedural defects and inconsistencies. Some examples follow:

"1. Sections 62 and 69 give the supposed alcoholic, drug addict or dangerous epileptic notice of the filing of an application for his commitment and guarantee him a hearing on the question of whether he is a proper subject for commitment; but notice and hearing are not required in the case of the supposed insane or feebleminded person. Moreover the right of appeal from an order of commitment is given only to alcoholics and drug addicts. (See Section 63).

"2. The provisions for hearings whether required (as in Sec. 63) or permissive (as in Sec. 51) are either vague or silent as to the place and the conduct of hearings.

"3. There are ten separate procedures for involuntary commitment — four for supposed insane persons (Sec. 51, 77, 78 and 79), two for alcoholics and drug addicts (Sec. 62 and 80), two for feebleminded persons (Sec. 66 and 66A) and one for epileptics (Sec. 69). In addition, another statutory scheme has been established by sections 99ff for commitment of persons under complaint or indictment for any crime. If medically feasible, it would certainly be in the interests of simplicity and good administration to provide for a uniform commitment procedure for all types of mentally abnormal persons. Such uniformity would appear to be equally desirable in the case of the procedure for discharge of persons from mental institutions. At present there are, at least, three separate procedures provided in the case of discharge (see Sections 88 through 93 and Section 105).

"4. The provisions of Sec. 57 through 61 and 92–93 dealing with jury trials on whether a person should be committed or discharged from a mental institution have not been invoked in recent years. Since there is no constitutional requirement of jury trials in commitment cases (see Note, 91 A.L.R. 88 [1934]), and 'abolition of the right to a jury trial . . . (in mental cases) has been urged by both medical and legal authorities,' (see *Analysis of Legal and Medical Considerations in Commitment of the Mentally Ill*, 56 Yale Law Journal 1178, 1193), these provisions might well be repealed.

"In addition Chap. 123 would appear to contain other confusions and inconsistencies which are more substantive in character. For example, there is a confusion between orders of commitment and adjudications of mental incompetence. (See particularly the phraseology of Sec. 94A, relating to adjudication of restoration of soundness of mind, which seems to imply that mere commitment creates a presumption of mental incompetence.) While our courts have emphasized the distinction in the past (see, e.g., *Leggate* v. *Clark*, 111 Mass. 308 (1873) it seems now in danger of disappearing. Thus the law is no longer clear as to what rights and privileges are taken away and what are left intact in the case of commitment without such adjudication."

Since receiving all these suggestions very recently, the Council has had no opportunity to consider so involved a "subject matter" in the light of the criticisms directed at it. The procedure relating to the mentally ill and the question as to the wisest combination of

judicial and medical functions and their administration, seems so intimately connected with the substantive provisions as to their treatment and care and the institutions established for that purpose, that the subject appears to be largely outside of the field of inquiry for which the Judicial Council was created and equipped.

In 1947 two bar committees — the Executive Committee of the Massachusetts Bar Association and the Committee on Substantive Law of the Boston Bar Association — recommended a study of the "subject matter" referred to us, and connected problems, by a special commission. Presumably the matter was referred to the Council under a mis-apprehension as to its scope on the assumption that it could act as such a special commission on the subject which involves some questions of judicial procedure and practice. We, respectfully, call attention to the fact that there are limitations to the field in which the Council can function. Under date of November 9, 1948, we received the following letter from Mr. William H. Savin, Executive Director of "The Massachusetts Society for Mental Hygiene."

"Dear Sir:

"Last March, the Society's Board of Directors believing that House No. 1147 provided most satisfactorily for the purpose embodied in several bills concerning the operation of state mental institutions, then before the General Court, selected House No. 1147 for approval and support. It did not act specifically on House No. 216. You will note however, that House No. 1147, which sets up a commission to study the mental institutions, includes the clause "and also with respect to practices and policies prevailing thereat in the matter of admissions and discharges."

"It was felt that the actions proposed in House No. 216 could best be considered after a thorough study had been made, and the Society was in favor of the latter.

"The Society's action on House No. 1147 can be construed as including the objectives of House No. 216 in that it approved, not only study of the administration of the mental institutions, which it hoped would point up the need for adequate resources for them, but also study and recommendation concerning the legal provisions for commitment and discharge and the manner in which these are carried out in practice.

"Very truly yours,

"WM. H. SAVIN,

Executive Director."

We have received a similar suggestion from the petitioner as an official of the Massachusetts Mental Aid Society. Those who have submitted their comments to the Council, as above stated, also believe that such a study be a special commission with competent representatives of the medical profession in its membership is advisable.

Whether such a commission should be provided for, as it was in connection with the matter of juvenile delinquency, is for the legis-

lature to consider. The Judicial Council can only point out that a comprehensive study of the subject is utterly beyond its functions and facilities. So far as the more limited questions of jurisdiction and procedure of courts or judges involved in the bill referred and in its suggested revision, are concerned, in connection with chapter 123, the Council is not ready to express an opinion at the present time and, for these reasons, they do not recommend the passage of House 216. If a special commission should be created the bill and the other proposals submitted to us would seem to be within the field of its study.

H. 493 — RELATIVE TO CLARIFYING DECREES OF PROBATE COURTS

This bill referred by Resolves Chapter 14 reads as follows:

Section 1. Section 24 of chapter 206 of the General Laws, as amended by chapter 154 of the acts of 1938 is hereby amended by adding at the end thereof the following: — If such account is later reopened because a person to whom notice was ordered to be given by delivery or mailing was not given such notice, the accountant shall not be individually liable if it appears that he used due care and good faith in attempting to comply with such order.

Section 2. Section 25 of chapter 203 of the General Laws is hereby amended by adding at the end thereof the following: — If such decree is later revoked or modified because a person to whom notice was ordered to be given by delivery or mailing was not given such notice, the trustee shall not be individually liable if it appears that he used due care and good faith in attempting to comply with such order.

The matter of what notice is to be given on fiduciary accounts is one as to which the practice in different counties differs and as to which the opinions of courts are not entirely harmonious. As a consequence the bar is uncertain as to the requirements. A case was argued some months ago before the Supreme Judicial Court involving a number of questions having a direct bearing on the proposed bill. We, respectfully, suggest that the consideration of the matter be postponed until after that case is decided in order that we may know more about the present law. Accordingly we reserve recommendation on this bill until our next annual, or, possibly, an earlier special report. See note on page 56.

The Districts Courts

The volume of business of these much discussed courts is shown in Appendix A. The business of the Municipal Court of the City of Boston appears in Appendix C, page 78–79.

We call attention to the circular letters of the administrative Committee of the District Courts which are reprinted, as usual, in

Appendix B. Those letters contain a continuous story of the work of that committee and the helpful information distributed semi-annually to the judges, clerks and probation officers of those courts. Practitioners in these courts will do well to examine them and the index to the earlier letters in the 21st Report, pp. 64–67.

Frank J. Donahue, *Chairman*
Samuel P. Sears, *Vice-Chairman*
Louis S. Cox
John E. Fenton
John C. Leggat
Davis B. Keniston
Frank L. Riley
Frederic J. Muldoon
Wilfred J. Paquet
Reuben L. Lurie

NOTE

As these final proofs go to press the Supreme Judicial Court has handed down an opinion in the case of *Young et als, trustees,* v. *Tudor et als,* on December 9, 1948. As stated on page 55 of this Report, this opinion will have to be studied carefully before any report can be made, as requested by the legislature, on H. 493.

APPENDIX A

DISTRICT COURTS

There are 72 of these courts (listed in the table opposite this page) in addition to the Municipal Court of the City of Boston, and eight of them, besides that court, are in Suffolk County. Their volume of business appears in the tables *below*. These courts have been and still are the subject of perennial discussion. The history of the discussion since 1876 appears in the Law Society Journal for February 1945 (also MLQ May 1945, see also list of reports in 20th Report of the Judicial Council, page 29). For the sake of reasonable restraint in the language of criticism as applied to these courts as a whole, pages 86 and 92 of the 22nd Report of the Judicial Council should be read. The public service of many of those who have served in them deserves some appreciation.

The first column in the following table shows the volume of business in 1940–41. There was a slight drop in 1941–42, and the other columns show the fluctuations during, and since, the war years.

A Seven Year Comparison of Business from 1941–1948, Oct. 1 to Sept. 30
(*This table does not include the business of the Boston Municipal Court*)

For the figures as to each Court see insert facing next page.

	1940-41	1942-43	1943-44	1944-45	1945-46	1946-47	1947-48
Civil entered.....	78,966	48,242	36,001	33,009	38,660	51,616	59,817
Contract.....	31,069	22,254	17,330	15,027	15,356	19,676	24,512
Tort.....	35,133	16,978	10,332	9,668	11,416	13,213	15,443
Summ'y Process..	11,898	6,603	7,625	7,464	11,321	18,007	18,798
All other cases..	865	2,407	724	850	567	579	1,064
Rem. to S. Ct.....	13,453	6,955	3,049	2,847	3,261	4,098	4,544
Rep. to Ap. Div...	305	149	113	72	98	87	82
Appeals to S.J.C..	22	20	21	26	10	8	20
Sup. Process.....	19,878	18,538	14,639	11,785	10,990	11,517	13,148
Small Claims.....	45,281	40,208	33,057	28,986	28,950	37,788	48,594
Criminal cases...	167,885	125,486	106,650	105,936	135,176	168,465	155,452
Crim. ap. to S.C..	4,637	3,527	2,859	2,609	3,118	3,400	3,150
Drunkenness.....	67,991	54,202	41,227	41,715	48,807	62,244	59,398
Op. under inf. intox. liq.....	5,119	2,677	2,676	2,665	3,752	4,601	4,079
Tot. Auto. cases..	64,197	38,942	40,422	37,132	55,666	72,923	66,076
Liquor cases.....	488	387	335	228	217	170	207
Juv. cases under 17 years.....	5,855	7,063	7,207	7,458	6,376	5,542	4,701
Tot. mot. tort cases	31,190	15,165	8,994	8,251	9,836	11,398	13,593
Removals by plf.	5,209	1,860	25	–	–	–	–
Removals by def.	6,822	4,147	2,270	–	–	–	–
Removals by both	44	40	1	–	–	–	–
Total Removals	12,075	6,047	2,296	2,155	2,478	2,986	3,315

Neglected children	–	1,235	1,122	1,356	1,244	1,071	932
Inquests held....	–	77	77	115	147	96	82
Parking Tickets returned to clerk's office.....	–	–	77,669	66 492	108,927	155,035	249,142
Drunkenness releases by prob. officers	–	–	16,369	16,977	27,122	46,093	31,328
Number of Insane Commitments..	–	–	–	–	5,434	6,156	6,150

STATISTICAL COMPILATION OF WORK OF TRIAL JUSTICES

(Reported to the Administrative Committee of the District Courts)

October 1, 1947 to October 1, 1948

	Criminal Cases Begun	Criminal Appeals	Drunkenness	Drunkenness Releases	Automobile Cases	Juveniles Under 17 yrs.
North Andover	29	0	17	13	10	0
Andover	0	0	0	0	0	0
Nahant	164	2	10	8	72	12
Marblehead	39	0	106	79	26	5
Saugus	373	5	134	89	224	3
Hopkinton	0	0	0	0	0	0
Hudson	134	2	64	1	61	0
Hardwick	66	1	10	0	6	1
Barre	39	4	6	0	9	3
Ludlow	228	1	50	0	172	0

By St. 1947 Chapter 343 civil jurisdiction of claims up to $50.00 under the small claims procedure was extended to the Trial Justice in the town of Barre. Twenty-two cases have been entered.

STATISTICS OF THE DISTRICT COURTS OF MASSACHUSETTS FROM OCTOBER 1, 1947 TO OCTOBER 1, 1948
AS REPORTED BY THE CLERKS OF SAID COURTS.

Compiled by the Administrative Committee of District Courts

DISTRICT COURT	Civil Writs Entered	Contract	Tort	Summary Process (Ejectment)	All Other Cases	Removals to S. C. (Total of all removals)	Total Motor Tort Cases entered	Total removals of such to Superior Court	Reported to App. Div.	Appealed to S. J. C.	Supplementary Process	Small Claims	Criminal Cases Begun	Criminal Appeals	Drunkenness Total Number of Complaints	Automobile Cases (total)	Operating under influence of intoxicating liquor	Intoxicating Liquor Cases	Juvenile Cases under 17 years
Worcester, Central	4,331	1,710	1,399	1,071	151	310	1,190	208	10	2	742	3,030	9,527	76	4,264	2,822	109	4	384
Springfield	3,014	1,523	526	931	34	131	408	78	6	2	891	2,525	18,389	38	4,911	12,231	165	16	111
Middlesex, 1st Eastern	4,578	1,973	1,415	1,145	45	452	1,258	356	4	0	897	2,597	4,145	69	1,238	2,198	107	0	160
Roxbury	1,833	106	323	1,385	19	93	272	79	0	0	1,115	1,858	11,691	516	4,210	4,441	106	24	447
Bristol, Third	1,980	703	530	737	10	194	462	144	2	0	248	2,238	3,011	60	1,606	618	166	17	203
Middlesex, 3rd Eastern	4,029	1,836	1,190	983	20	247	1,057	192	8	0	721	2,149	9.087	144	2,958	5,158	166	3	244
Dorchester	1,801	138	624	1,024	15	145	531	111	1	0	901	1,413	3,790	113	1,569	1,310	53	5	134
Lowell	1,986	732	650	565	39	185	560	146	1	1	221	1,890	2,520	31	1,542	241	49	7	65
Bristol, Second	1,422	589	355	457	21	129	314	48	0	0	104	1,349	3,005	97	1,234	596	88	1	105
Essex, Southern	2,652	1,033	788	792	39	275	714	218	2	1	387	1,120	3,151	60	1,544	975	112	8	101
Lawrence	1,398	533	416	439	10	87	373	76	3	0	146	1,006	2,978	76	1,917	850	86	21	99
Norfolk, East	2,436	1,274	660	476	26	135	567	93	3	2	778	2,131	3,510	49	1,465	1,296	161	0	162
Somerville	2,134	996	301	695	142	116	275	97	2	0	480	914	3,117	35	1,593	553	90	4	116
West Roxbury	854	96	153	591	14	27	132	16	1	0	427	807	3,150	97	1,031	1,629	62	2	149
Essex, First	1,836	1,131	305	393	7	169	272	102	0	0	284	973	2,246	94	1,179	703	130	5	77
Brockton	1,292	612	360	246	74	83	331	50	5	2	209	772	2,143	49	1,063	681	74	8	63
East Boston	854	114	290	437	13	81	272	69	3	1	276	739	3,547	127	886	1,754	12	5	207
Chelsea	1,360	285	553	506	16	204	463	154	0	0	286	913	4,098	95	1,656	1,497	54	11	92
South Boston	477	23	66	384	4	20	58	19	1	0	201	515	4,490	135	2,431	1,345	26	2	107
Essex, North Central	713	286	220	196	11	65	186	46	2	0	67	596	1,787	21	905	321	46	0	15
Holyoke	458	143	119	190	6	36	104	21	0	0	42	537	1,470	8	1,187	630	58	0	53
Hampshire	461	149	92	188	32	32	64	18	0	0	40	686	2,317	17	685	992	112	1	20
Middlesex, 2nd Eastern	1,496	729	345	376	46	85	345	64	1	0	265	1,232	3,658	68	1,086	2,228	58	3	151
Berkshire, Central	755	423	62	264	6	9	52	3	0	0	147	1,519	2,687	21	814	1,412	60	3	42
Bristol, First	590	236	164	187	3	80	147	41	1	0	39	420	1,117	45	283	413	63	8	50
Middlesex, 4th Eastern	965	527	229	203	6	61	215	51	0	0	429	815	1,638	47	734	642	82	0	58
Newton	1,208	596	342	258	12	87	309	54	1	0	238	694	2,009	24	555	1,126	38	1	41
Fitchburg	491	169	82	197	43	18	70	7	0	0	42	288	2,064	37	1,323	384	62	0	58
Norfolk, Northern	879	465	258	149	7	67	236	54	7	0	196	465	1,124	19	406	374	64	0	30
Brighton	626	83	127	412	4	23	102	16	0	0	333	778	3,201	54	1,123	1,691	27	4	30
Franklin, Greenfield	242	114	60	67	1	16	57	12	1	0	10	576	1,074	9	325	360	80	10	38
Worcester, 1st Southern	339	134	73	128	4	26	67	21	0	0	32	621	1,144	18	318	569	41	0	27
Brookline	1,165	572	315	265	13	64	277	31	3	0	221	433	2,259	57	351	1,605	34	2	104
Bristol, Fourth	343	166	41	129	7	24	43	6	0	0	124	455	1,272	36	150	756	72	0	53
Plymouth, Second	695	426	129	123	17	33	124	23	1	1	176	827	1,138	53	669	331	119	6	43
Chicopee	293	74	53	158	8	14	41	14	0	0	30	316	837	3	374	200	36	1	42
Worcester, 1st Northern	342	150	96	91	5	27	89	19	0	0	92	722	1,065	19	589	231	73	2	26
Charlestown	512	40	248	217	7	90	221	82	0	0	189	381	6.158	113	2,053	3,468	26	3	185
Middlesex, 1st Southern	701	337	246	113	5	161	232	145	0	0	124	407	1,859	15	651	797	79	0	24

Plymouth, Second	695	426	129	123	17	33	124	23	1	1	176	827	1,138	53	669	331	119	6	43
Chicopee	293	74	53	158	8	14	41	14	0	0	30	316	837	3	374	200	36	1	42
Worcester, 1st Northern	342	150	96	91	5	27	89	19	0	0	92	722	1,065	19	589	231	73	2	26
Charlestown	512	40	248	217	7	90	221	82	0	0	189	381	6.158	113	2,053	3,468	26	3	185
Middlesex, 1st Southern	701	337	246	113	5	161	232	145	0	0	124	407	1,859	15	651	797	79	0	24
Essex, Eastern	397	253	39	96	9	24	26	17	3	3	85	245	951	29	520	166	35	0	17
Norfolk, Western	436	236	88	104	8	35	83	23	0	0	64	412	793	10	114	406	41	1	26
Middlesex, Central	356	173	102	80	1	38	87	34	2	1	85	298	693	40	186	392	59	0	40
Worcester, 2nd Southern	191	53	59	74	5	23	59	21	0	0	16	161	267	3	38	99	4	3	6
Hampden, Western	185	86	27	69	3	9	22	6	2	0	35	414	755	9	210	329	44	0	23
Berkshire, Northern	178	73	13	89	3	2	11	0	1	0	15	204	638	29	332	219	32	0	25
Marlborough	316	118	97	96	5	35	87	31	0	0	42	391	396	11	185	100	33	0	20
Worcester, 2nd Eastern	182	85	43	53	1	13	42	11	1	1	43	155	280	11	103	107	19	0	21
Newburyport	264	126	69	64	5	26	64	21	1	0	40	393	1,628	29	869	497	80	0	13
Plymouth, Third	245	161	26	55	3	3	21	1	0	0	41	371	725	22	309	228	72	2	41
Peabody	384	195	86	101	2	40	75	34	1	0	40	163	684	25	424	61	22	2	10
Leominster	275	123	43	106	3	8	43	5	0	0	42	106	918	20	482	210	26	0	29
Worcester, Western	276	198	38	38	2	13	28	7	1	0	69	286	317	25	97	77	23	0	7
Worcester, 3rd Southern	286	113	57	77	39	16	55	8	0	0	37	484	259	40	62	63	9	0	9
Hampden, Eastern	100	56	11	31	2	7	11	2	0	0	21	387	487	11	95	282	35	0	14
Plymouth, Fourth	244	123	55	61	5	11	47	10	0	2	34	352	887	23	236	233	42	1	67
Norfolk, Southern	260	150	64	46	0	16	56	9	1	0	51	195	355	28	96	108	25	0	20
Middlesex, 1st Northern	152	75	39	35	3	14	38	12	0	0	21	165	1,112	54	286	521	78	0	29
Worcester, 1st Eastern	155	64	51	40	0	23	50	21	0	0	24	97	447	8	105	167	26	1	18
Berkshire, Fourth	86	36	8	40	2	5	2	0	0	0	4	78	428	2	155	169	26	0	8
Essex, Second	99	48	20	31	0	6	18	6	0	0	18	165	527	14	163	229	33	0	7
Barnstable, First	352	246	44	61	1	12	41	10	0	0	38	272	1,230	7	534	366	55	0	29
Barnstable, Second	131	105	13	13	0	19	12	6	0	0	18	125	404	10	112	124	26	2	17
Berkshire, Southern	107	69	11	25	2	4	8	0	0	1	2	163	458	4	158	245	19	0	6
Natick	211	109	61	41	0	15	57	15	0	0	35	117	627	12	123	461	22	0	16
Lee	51	23	9	19	0	2	9	2	0	0	10	129	392	6	95	196	30	1	7
Hampshire, Eastern	76	32	9	34	1	3	8	1	0	0	20	156	254	0	87	137	19	0	2
Franklin, Eastern	49	29	9	5	6	3	9	3	0	0	6	148	156	2	15	82	14	5	1
Essex, Third	92	50	20	22	0	9	20	9	0	0	19	28	260	14	120	73	29	0	7
Winchendon	58	36	7	11	4	6	7	6	0	0	4	97	215	1	103	113	19	0	5
Dukes County	36	29	4	2	1	1	4	0	0	0	12	83	186	2	64	77	26	0	6
Williamstown	26	5	13	7	1	2	0	0	0	0	2	25	171	2	36	89	8	0	5
Nantucket	20	8	3	4	5	0	3	0	0	0	5	22	79	2	6	22	2	2	34
Total	59,817	24,512	15,443	18,798	1,064	4,544	13,593	3,315	82	20	13,148	48,594	155,452	3,150	59,398	66,076	4,079	207	4,701

ADDITIONAL INFORMATION

Neglected Children	932
Inquests held	82
Parking tickets returned to Clerk's offices	249,142
Drunkenness releases by probation officers	31,328
Insane Commitments	6,150

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS

ADMINISTRATIVE COMMITTEE OF THE DISTRICT COURTS

December 31, 1947.

To the Justices, Clerks and Probation Officers of the District Courts:

We are sending herewith on separate sheet the statistical compilation of the work of the District Courts for the year ending September 30th, 1947. A five-year comparison is as follows: [Here followed tables which appear in this report p. 00 where they are brought up to 1948.]

The increase in the volume of business both civil and criminal noted in our letter of January 2nd, 1947, is even more noticeable in the returns for the year ending September 30th, 1947.

A study of the foregoing statistics shows the following changes:

Civil writs entered increased from 38,660 to 51,616 — of these contract actions increased from 15,356 to 19,676, tort actions from 11,416 to 13,213; Summary Process from 11,321 to 18,007, reflecting the housing problem. The total number of removals to the Superior Court increased from 3,261 to 4,098, the removal of tort cases from 2,478 to 2,986. Small claims, after remaining static for the preceding year, increased from 28,950 to 37,788, while Supplementary Process increased from 10,990 to 11,517. The number of criminal cases begun (actually the number of defendants in such cases) increased from 135,176 to 168,465, while appeals increased from 3,118 to 3,400. This record of only 2% dissatisfaction with the decision of the District Courts is an outstanding compliment to them. Automobile cases increased from 55,666 to 72,923 — operating under the influence from 3,752 to 4,601. Drunkenness cases increased from 48,807 to 64,244, releases of such by the Probation Officers 46,093 as against 27,122 last year, reflecting the repeal of the unwise legislation of a previous Legislature. Intoxicating liquor cases decreased from 217 to 170. There were 96 inquests as against 147 last year. Parking tickets returned to the Clerk's Offices numbered 155,035 as against 108,927. Cases reported to the Appellate Division decreased from 98 to 87 — of these 8 were appealed to the Supreme Judicial Court, a decrease of 2. There were 6,156 insane commitments as against 5,434. In view of this information the Legislature may wish to amend Chap. 683 of the Acts of 1947 and remove the burden therein imposed from the Probate Court to the District Court. The number of juvenile cases decreased from 6,376 to 5,542. We repeat our comment of January last that this sharp drop does not support the alarmist's statements of radio, press and speakers. Again we repeat, the word "juvenile" represents to the Courts a child under 17 years of age.

A perfect record in the matter of delayed decisions in civil actions was prevented by the holding of three cases for decision more than sixty days after the close of hearings, one in each of the Courts in Malden, Concord and Stoughton,

Statistical Compilation of Work of Trial Justices

October 1, 1946 to October 1, 1947

[Here followed figures printed on p. 61 of the 23d Report of the Judicial Council.]

By St. 1947 c. 343 civil jurisdiction of claims up to $50.00 was extended to the trial justice of Barre. Five (5) such cases were reported for this year. [Here followed the correction of a figure in the district court table.]

The Supreme Judicial Court has handed down these decisions which are of interest.

In *Geller* v. *Stone*, 1947 Adv. Shs. 445, the Court held a four-room attic apartment is a present compelling hardship for a family of parents with a four-year-old daughter and a one-year-old son, having in mind the safety of the children, the welfare of the family and the mother's own health.

In *Commonwealth* v. *Kimball*, 1947 Adv. Shs. 563, the Court held that the rule in Massachusetts is that a confession wholly without corroboration will support a conviction. The finding of the Trial Judge that prior statements of a witness bore only on her credibility was inferentially approved.

In *Vieira* v. *Menino*, 1947 Adv. Shs. 1281 it was held that an action of contract was the proper remedy to recover an alleged overcharge of rent under the provisions of the emergency price control act of 1942.

The New Juvenile Probation Officer Districts

By Chap. 655 of the Acts of 1947 the Legislature drastically changed G. L. Chap. 276 Sec. 83A relating to juvenile probation officers in the District Courts. This Statute was not approved until June 25, 1947 and required the Administrative Committee to designate juvenile probation districts in the various counties before August 1st of this year, at which time the bill was not in print. Your Committee, before August 1st, made designation of seven such districts, one in Plymouth County which already existed, one in Norfolk County which was enlarged, entirely new districts in Middlesex, Essex and Berkshire Counties and two new ones in Worcester County. The judges of the courts involved were, for the most part, very cooperative. Many candidates were interviewed by the judges, the Administrative Committee and the Probation Commission. As a result, appointments have been made and approved in all the designated districts, although one vacancy remains to be filled in Berkshire County. The probation officers approved and appointed appear to be exceptionally well qualified and enthusiastic. The County Commissioners who have, with the Administrative Committee, the joint approval of the salaries of these probation officers, have not been entirely helpful in some instances, which has hampered the work of the Committee. We are advised that this legislation was a substitute for bills providing for separate juvenile courts in each county and, in our opinion, will be fully as effective as the latter and much more economical. The practical difficulties in establishing this new system and operating it will have to be met and the problem wisely solved. The experience in Plymouth County where the system has been in operation for some years, is very gratifying. It is believed that with genuine co-operation on the part of court and county officials, the police and established organizations, that the system should be successful in the other counties and render a distinct public service in combatting juvenile delinquency. The Committee welcomes co-operation, patience and understanding from all the officials concerned in the administration of this Act.

Determination of Number of Simultaneous Sessions and Assignments of Special Justices (Effective January 1st, 1948)

On account of the increase in business during the past year the Committee has increased the number of simultaneous sessions in most of the Courts, effective January 1, 1948, and has revised the list of Special Justices assigned to the various courts. This amended list of Special Justices assigned and number of simultaneous sessions amending Requirements No. 3 and 4, has been printed separately and mailed to the Justices of each court.

Judge Charles L. Hibbard retired on October 1st, after a service of 25 years. He was first appointed on October 1, 1922, on which date the legislation creating the Committee became effective. He was succeeded by Judge Ernest E. Hobson of Palmer. Judge Hibbard, active to the last, died suddenly on November 15, 1947. During his service on the Committee as member, secretary and chairman, he had contributed more than any other one man to the welfare and success of the District Court system. He was possessed of remarkable executive ability and had a tremendous capacity for work and detail, which he handled without any perceptible effort. His commanding presence and courtly bearing accurately reflected his marked judicial attainments, his ability for quick and accurate decision and his human understanding. In the passing of Judge Hibbard we have lost a distinguisned judge and a friend.

Frank L. Riley, *Chairman*
Elbridge G. Davis
Kenneth L. Nash
Leo H. Leary
Ernest E. Hobson

July 15, 1948.

To the Justices, Clerks and Probation Officers of the District Courts:

In accordance with the custom followed for many years, this Circular Letter is being sent to all the District Courts and to the Trial Justices. One of the chief purposes is to call the attention of the various court officials to the Acts of the Legislature passed at the last session affecting District Courts and procedure therein. After a great many years and consideration by numerous commissions, the Legislature has finally passed legislation dealing with the District Courts as a whole. We feel a foreward step has been taken and hope that the next Legislature will enact other measures continuing the progressive action that has been initiated.

Chap. 656 of the Acts of 1948 provides for four full-time courts, precluding the justices and clerks therein from directly or indirectly engaging in the practice of law. These courts are the District Court of Springfield, Central District Court of Worcester, and the First and Third District Court of Eastern Middlesex. This Act becomes effective February 1, 1949.

Chap. 667 makes provision for an increase in the salary of the justices and clerks, except the clerks of Suffolk County, of the other 68 District Courts and the Juvenile Court of Boston and contains no restriction as to the practice of law by any officials in these courts. This Act is effective January 1, 1949. We understand that a copy of these Acts has been mailed to all of the courts by the secretary of the Association of the Justices of the District Courts.

In addition to the foregoing, the sum of $150.00 has been paid, as an interim cost of living adjustment, to all persons in the service of the various counties on January 15th of this year who are on a full-time basis, and a proportionate part of that sum to those on a part-time basis, and each probation officer in the counties other than Suffolk, whose service is determined by the County Commissioners to be full-time, is to receive an increase of $180.00 per year.

By *Chap. 642*, life tenure, under certain conditions, is provided for assistant clerks of the District Courts and by *Chap. 640* the compensation of probation officers in the County of Suffolk, except those in the Municipal Court of the City of Boston and Boston Juvenile Court, is regulated.

One of the earliest Acts of the Legislature was Chap. 2 which provides for a 12 months' period of stay or successive stays of execution in actions of Summary Process, with a provision that any person who recovers possession of premises used for dwelling purposes on the misrepresentation to the court that he intends to use said premises for his own use, shall be guilty of contempt of court. We have heard little of the use of this latter provision of this Statute and assume that almost invariably the proceedings to recover possession have been made in good faith.

We have had many inquiries for the construction of Sec. 209 (c) of the Federal Housing and Rent Act of 1948 which provided "No tenant shall be obliged to surrender possession of any housing accommodations pursuant to the provisions of paragraphs (2), (3), (4), (5) or (6) of subsection (a) until the expiration of at least 60 days after written notice from a landlord that he desires to recover possession of such housing accommodations for one of the purposes specified in such paragraphs." In order that no conflict should arise over the interpretation of this clause, the Committee took the matter up with the Federal Expediter and has received an opinion from the Chief Rent Attorney that if 60 days transpire from the date the notice to vacate is given until the date of execution for possession is issued, there is a full compliance with the requirements of this provision of the Act. The Committee concurs in this opinion of the Expediter and has so advised all of the courts with whom it has come in contact or who have asked its advice. One of the larger courts has required an affidavit to be filed by the attorney of record or the plaintiff, reciting under which section the action is brought and when written notice to the tenant was given, unless the same is apparent from the writ or upon the record, before an execution in any Summary Process will be issued. The affidavit is as follows:

I,.....in behalf of the plaintiff, on oath depose and say that the plaintiff in the above named action seeks to recover possession under the Rent Control Act of 1948 Section 209A — ( ) for....., and that written notice thereof was given the defendant on.....1948.

.....

.....ss 1948

Subscribed and sworn to before me.

.....

Justice of the Peace — Notary Public

In view of the fact that so little appears upon the record or in the writ in a Summary Process action, we feel that the foregoing affidavit would be helpful and avoid any misunderstanding and, consequently, recommend its use or that of some similar affidavit. Our visits to the various courts throughout the Commonwealth have led us to the conclusion that the very troublesome matters arising under Summary Process actions have been extremely well administered in the District Courts.

One of the most important and comprehensive laws relating to the care and protection of delinquent children and juvenile offenders is Chap. 310 which provides for the establishment of a Youth Service Board and defines its powers and duties. When this Act becomes effective commitments in these cases will be made by the courts not to the present institutions but to the Youth Service Board. It was passed as an emergency act and some of the provisions are now effective but, insofar as commitments to the Board by the courts is concerned, the same is effective January 1, 1949.

In addition to Chap. 310, Chap. 542 provides for the maintenance by the Youth Service Board, for a limited time, for temporary detention of juveniles in the City of Boston, and Chap 573 has special provisions relative to the commitment of habitual truants and absentees. These latter two Acts are not yet in print and we advise a careful reading of all legislation pertaining to the Youth Service Board and its authority.

In addition to the foregoing the following Acts have been passed by the 1948 Legislature. [Here followed a list of statutes relating to matters within the jurisdiction of district courts.]

District Juvenile Probation Officers

During the past few months the Committee has visited most of the courts, except in Berkshire County, in which juvenile probation officers have been appointed in districts designated by the Committee under the provisions of G. L. Chap. 276 Sec. 83A, which was enacted into law in 1947. The Committee has been impressed by the satisfactory service which these probation officers have rendered to the courts and the community. Except in Berkshire, we have met and interviewed all of these probation officers who, without exception, have carried out their work with enthusiasm and understanding. We wish to take this opportunity of expressing our congratulations to these new juvenile probation officers, who for the most part are new to the probation service, for their outstanding work and to the justices and other officials of the courts whom they serve, for their consideration and cooperation in this new development of the probation service. We also desire to express our appreciation to the Board of Probation and to Mr. Carter, Commissioner of Probation, for the interest they have shown in carrying out the provisions of this law and the assistance they have rendered to the courts and the probation officers in its administration.

In this connection, the Board of Probation informed us some time ago that the procedure in all courts in reference to the supervision of neglected children by these district juvenile probation officers was not uniform and suggested that uniformity of procedure in the various courts was to be desired. We concur in this thought of the Board of Probation and recommend that the supervision of neglected children be given to the district juvenile probation officer, preferably the female officer, who can then cooperate with the regular probation officer of the court involved in the supervision of the parent. This procedure has been followed in most of the larger courts for years and the experience has been that it is more advantageous for all concerned to have the female probation officer supervise the children and home from the beginning of the case and during such continuances as are frequently made in such cases.

Costs in Supplementary Process Cases

During the past few months we have had some complaints about the payment of costs of arrests in Supplementary Process cases. We appreciate that this is a matter

of discretion with the individual justice, depending upon the circumstances of the case, and that no hard and fast rule can be laid down. We suggest, however, that ordinarily the debtor, unless he has some extraordinary excuse, should be made to pay the costs of arrest upon a capias issued for some default of his, before further orders are made in the case.

Neglect to Support Children

The case of *Broman* v. *Byrne*, Mass. A.S. (1948) 447, has created considerable discussion as to the liability of a divorced father, under G. L. Chap. 273, to support children whose custody has been given to the mother without any order having been made in the Probate Court for the support of these children. In the above case, which was a petition for adoption, the court said at page 449 "In the present case, after the custody of the child was given by decree to the petitioner, in the absence of any order of court the respondent was no longer liable for its support." After careful consideration we have come to the conclusion that the decision in this case does not bar a prosecution against the father for the non-support of such children, even though no order for support has been made in the Probate Court at the time of the divorce. We feel that the civil liability which existed at Common Law and which is stressed in the Broman case, does not preclude a criminal responsibility for support which is provided in G. L. Chap. 273. We think the distinction between the two liabilities of a parent for support of minor children, where custody has been given to the mother, is explained in Miller's case, 224 Mass. 281 at 284. Of course no controversy can arise in respect to this obligation if an order for support has been made in the Probate Court and, ordinarily, such an order would be made if asked for by the mother if there is any evidence upon which the Probate Court could make an order. We think the Probate Courts generally will cooperate in making orders in such cases as are possible to do so, but we feel that even if no order has been made and the circumstances warrant it, the District Court can still take jurisdiction of such a case under G. L. Chap. 273.

Small Claims Practice and Procedure

Our attention has been called to the refusal of one clerk to accept in his court small claims for damages resulting from automobile accidents, even though the amount involved is less than $50.00.

Also of another court which refuses to accept small claims by mail from an attorney living at a distance from the court as provided by Rule 1 of the District Court Rules.

The procedure for small claims was instituted by the Legislature for the very purpose of giving prompt, efficient and inexpensive service to any litigant with a claim for less than $50.00. The kind of action that may be brought under this procedure is limited only by the correct venue and the amount involved. The clerk has absolutely no discretion in the matter, but should receive it provided the filing fee is paid. The disposition of it is a matter for the judge after hearing the evidence.

Some Recent Supreme Court Decisions

In *Commonwealth* v. *Sharp*, 1948 A.S. 287, the defendant was convicted upon a complaint charging him with the violation of a traffic regulation, in that he failed, while operating an automobile, to comply with the directions placed upon an official traffic sign. The Court said the defendant obviously was not guilty of the offense

charged if the traffic signals were not lawfully maintained, that is, if the signals did not comply with the application of the city to the Department of Public Works of the Commonwealth or were not in accord with the permit granted by the said Department.

In *Callow* v. *Thomas*, 1948 A.S. 421, it was decided that a wife, after the marriage has been annulled, cannot maintain an action against her former husband for a tort committed during coverture. The Court said this question had never before been presented in this jurisdiction and that no like case in any other jurisdiction had been brought to its attention, and that it had found none.

In *National Bond and Investment Company* v. *Flaiger*, 1948 A.S. 279, it was held that an agreement contained in an original obligation never to set up the statute of limitations violates the public policy of the statute and is invalid.

In *Commonwealth* v. *Farrell*, 1948, A.S. 477, where defendant was convicted on several indictments, one being an indictment charging an assault and battery by means of a dangerous weapon, to wit, a lighted cigarette, the Supreme Court again deals with drunkenness as an excuse of crime. On Page 491 the Court says: "Assignment 66 is based upon an exception to the refusal of the judge to instruct the jury 'If you find on all the evidence that the defendant committed any assault on Helen Stavrou and you further find that at the time he committed it he was so far intoxicated as to be unable to form a guilty intent your verdict will be 'not guilty.' ' The requested instruction was not correct in law and was properly refused. As is said in *Commonwealth* v. *Hawkins*, 3 Gray 463, 466: 'The rule of law is, that although the use of intoxicating liquors does to some extent blind the reason and exasperate the passions, yet, as a man voluntarily brings it upon himself, he cannot use it as an excuse, or justification or extenuation of crime. A man, because he is intoxicated, is not deprived of any legal advantage or protection; but he cannot avail himself of his intoxication to exempt him from any legal responsibility, which would attach to him, if sober.' . . . . . The instant case does not present any question of deliberate premeditation as in cases of first degree murder. *Commonwealth* v. *Parsons*, 195 Mass. 560, 571."

The attention of justices is called to the case of *L. Grossman & Sons, Inc.* v. *Martha E. Rudderham*, 319 Mass. 698. In this case Mr. Justice Lummus in substance said that where the evidence is conflicting a question of fact is presented which a trial judge can decide either way, and it is therefore plainly erroneous for the judge to refuse a requested ruling that there is sufficient evidence to warrant the court to make a finding in favor of the party making the request; that such refusal implies an erroneous ruling that the law required a finding for the other party. He calls attention to the fact that requests of this sort were first recognized as logically proper in *Bresnick* v. *Heath*, 292 Mass. 293, decided in 1935, and said that they at once came into common use; that ever since they have caused inexplicable confusion in many minds, and that careful and repeated exposition has not availed to prevent any blunders in dealing with them. Judge Lummus again deals with this question in the case of *Connell* v. *Maynard*, 1948 A.S. 67. In this case the request was "Upon all the evidence a finding for the plaintiff is warranted." It says the Court assumes that the evidence warranted a finding for the plaintiff. If so, the request ought to have been given, unless that request was made immaterial by findings upon the facts. In this case the Court says the trial judge did make a finding of fact that rendered the requested ruling immaterial. The judge found that "the manner in which the accident occurred is a matter of conjecture." The finding was in substance that the defendant was not shown to have caused injury to the plaintiff by any negligence.

Your Committee is of the opinion that in all cases where the evidence is conflicting and presents a question of fact which the trial judge can decide either way, and a request is filed for a ruling that the evidence warrants a finding in favor of the party making a request, and the Court finds on the evidence against the party making the request, it is always safer to grant the request as a matter of law, and then say that it becomes immaterial in view of the facts as found by the Court.

Visitation of Courts

During the past few months we have visited most of the courts in the eastern part of the State except in the County of Suffolk and expect to resume these visitations in other parts of the Commonwealth during the coming fall. One of the chief benefits of these visitations is to become acquainted with new personnel and to renew contact with those who have already been in service. We wish to express our appreciation for the courtesy and cordiality with which the Committee has been received.

On January 1, 1948 Judge Davis, who had served as a member of the Committee with great ability, faithfulness and energy since its organization under the provisions of the Acts of 1941, retired as Justice of the First District Court of Eastern Middlesex and from the Committee and his place on the Committee was taken by the Hon. Arthur L. Eno, Judge of the District Court of Lowell.

Frank L. Riley, *Chairman*
Kenneth L. Nash
Leo H. Leary
Ernest E. Hobson
Arthur L. Eno

APPENDIX C

Summary of the Work Accomplished by the Various Courts

The act creating the Judicial Council (reprinted at the beginning of this report) provides that the Council shall study "the work accomplished and the results produced by the judicial system an its various parts" and "shall report annually upon the work of the various branches."

The annual periods reported by the different courts are not the same, some reporting for the last calendar year while others report from June 30 to June 30, or from September 1 to September 1, etc. The details as to counties appear below as reported by the clerks of the courts.

Supreme Judicial Court (*Full Bench Cases*)

During the court year September 1, 1947, to August 31, 1948, the Supreme Judicial Court decided 221 cases with opinions and 18 cases by rescripts, not accompanied by opinions; and gave 5 advisory opinions. These cases are reported beginning in 321 Mass. at page 286 and ending in 323 Mass. at page 232 and Supplement.

The table of full-bench cases from 1875 to 1939 appears on p. 71 of the 15th Report. The usual table of Supreme Court business, other than full-bench cases, with more detailed statements from Suffolk county appears below.

SUPREME JUDICIAL COURT ENTRIES FOR ALL COUNTIES

For the Year Beginning September 1, 1947, through August 31, 1948

(Not including full bench cases)

	Equity	Transferred to Other Courts	Referred to Masters or Auditors	Prerogative Writs	Petitions for Admission to Bar	Other Proceedings
Barnstable	—	—	—	—	—	—
Berkshire	1	—	—	—	—	—
Bristol	1	—	—	1	—	1
Dukes	—	—	—	—	—	—
Essex	—	—	—	—	—	1
Franklin	—	—	—	—	—	—
Hampden	3	—	—	—	—	—
Hampshire	—	—	—	—	—	—
Middlesex	3	2	—	—	—	—
Nantucket	—	—	—	—	—	—
Norfolk	—	—	—	—	—	2
Plymouth	—	—	—	—	—	—
Worcester	—	—	—	1	—	—
Totals	8	2	—	2	—	4

SUPREME JUDICIAL COURT FOR THE COUNTY OF SUFFOLK

REPORT FROM SEPTEMBER 1, 1947 TO SEPTEMBER 1, 1948

Transferred to Other Courts	Referred to Masters or Auditors	Prerogative Writs	Petitions for Admissions to the Bar
23	0	38	1090

Law Docket		
Applications for discharge under G. L. c. 123, s. 91		3
Appeals from decision of Appellate Tax Board		24
Petitions for admission to the Bar		1,090
Petitions for Writ of Error		7
Petitions for Writ of Mandamus		23
Petitions for Writ of Certiorari		3
Petitions for Writ of Habeas Corpus		4
Petition for Writ of Prohibition		1
Petition by Bar Association (Disciplinary Action)		1
		1,156
Total Entries on Law Docket	*1,156*	
Equity Docket		
Bills of Complaint		2
Bills in Equity		1
Bill for authorization to sell real estate		4
Petitions		2
Petitions for Dissolution		3
Petitions for Dissolution (G. L. c. 155, s. 50A) (About 1268 orporations)		1
Petition in Equity (Ter. Ed.) G. L. c. 155, s. 22		4
Petitions for Suspension of Decree of Superior Court		1
Petition for Instructions		1
Petition under (Ter. Ed.) G. L. c. 205, s. 23		1
Petition under (Ter. Ed.) G. L. c. 112, s. 64		1
Petition of Commissioner of Banks for appointment of Guardian as liten c. 327, Acts of 1945		1
Information		2
Application under (Ter. Ed.) G. L. c. 152, s. 17 for suspension of Order and Decision of Reviewing		33
Total Entries on Equity Docket	*33*	
Total Entries on Both Dockets	1,189	

THE SUPERIOR COURT

This court consists of a chief justice and thirty-one associate justices. It has unlimited civil and criminal jurisdiction and holds sessions in all of the fourteen counties. It is the only court sitting with juries. The tabulated returns of the clerks under St. 1936, chap. 31, § 3 for the year ending June 30, 1948, will be found on pp. 80–91.

To have a true picture of the work of the trial sessions one must take into consideration many cases settled during trials and others nonsuited or defaulted. An example is Suffolk County where a case is deemed tried only when a trial results in a verdict or disagreement. Over 66 per cent of all civil cases tried are tried in this county.

Motion sessions are held regularly in Suffolk, Middlesex, Worcester, Hampden and Essex and Norfolk Counties. In other counties motions are considered at jury-waived sessions. Many questions are considered by the court at these sessions.

PRE-TRIAL SESSIONS (106 DAYS) IN SUFFOLK COUNTY, JULY 3, 1947 TO JULY 2, 1948

(Reported by the Clerk of Suffolk County)

Number of cases on pre-trial list	4,436
Number of cases pre-tried	3,205
Number of cases settled by agreement*	668
Number of cases nonsuited	80
Number of cases defaulted	50
Number of cases disposed of by nonsuit and default, or discontinued	35
Number of cases referred to auditors	30
Number of cases where jury was waived	165
Number of cases continued	395
Number of cases to trial lists (short lists)	1,482
Number of cases from pre-trial lists settled on trial lists (short lists)	860

PRE-TRIAL "DISPOSITIONS" JULY 3, 1947 TO JULY 2, 1948

Cases on Pre-trial List			4,436
Cases Pre-tried	3,205		
Cases not Pre-tried	1,231		
Cases Pre-tried and Settled while awaiting trial	860		
Referred to Auditors	30		
Sent to Trial Sessions	1,647		
Awaiting trial	668		
		3,205	
Cases not Pre-tried			
Settled	668		
Nonsuits	80		
Defaults	50		
Nonsuits and defaults	35		
Continuances	395		
Cases in which entry of "Neither Party" was ordered entered	3		
		1,231	
Total Pre-trial "Dispositions"			4,436

WORCESTER COUNTY PRE-TRIAL SESSIONS

(Reported by the Clerk of Courts)

Number of days the Court sat	12
Pretried	451
Continued	204
Jury waived	15
Settled	23
Non-suits or defaults	11

PRE-TRIAL SESSIONS (15 DAYS) IN HAMPDEN COUNTY, JULY 1, 1947 TO JUNE 30, 1948

(Reported by the Clerk of Courts)

Number of cases on Pre-Trial Lists		900
Number of cases pre-tried	611	
Number of cases settled	72	
Number of cases nonsuited	5	
Number of cases defaulted	1	
Number of cases discontinued	1	
Number of cases referred to auditor	2	
Number of cases where jury trial was waived	19	
Number of cases ordered to subsequent pre-trial lists	189	
Number of cases to trial lists (short lists)		611
Number of cases from pre-trial lists settled		423
Number of days court sat for pre-trial	15	

APPELLATE DIVISION, SUPERIOR COURT

FOR THE REVIEW OF SENTENCES TO THE STATE PRISON AND REFORMATORY FOR WOMEN

APPEALS IN INDICTMENT CASES UNDER ST. 1943, CH. 558

November 1, 1947–October 31, 1948

(Reported by the Clerk of Suffolk County)

Number of defendants filing appeals	83	Appeals dismissed	34
Sentences modified	4	Appeals withdrawn	10
Sentences increased	none	Pending October 31, 1948	35

Number of defendants filing requests to the Appellate Division for leave to appeal ..... none

The division consisting of three Justices sat 13 days.

THE INDUSTRIAL ACCIDENT BOARD

January 1, 1947 to December 31, 1947

This board administers the workmen's compensation law as to cases formerly in the Superior Court. The secretary reports:

"During the year 1947, 277,331 reports of injury were filed with the Department, 331 being fatal injuries. About 65,400 were injuries causing the loss of at least one day or one shift.

"A total amount of approximately $19,399,540.65 was paid out in compensation, medical, and other statutory payments under the Workmen's Compensation Act. Insurers paid out $17,677,739.54; self-insurers paid out $1,216,677.31; and the governmental units which have accepted the provisions of the Act paid out about $505,123.80.

"The cost to the Commonwealth of administering the workmen's compensation law for 1947 was $438,621.82."

In 1946 it was $395,220.05 (see 23rd Report, p. 75). In 1927 it was $177,219.21 (see 4th Report, p. 60).

REPORTS BY EXECUTIVE CLERK TO THE CHIEF JUSTICE

References to Auditors and Masters in the Superior Court

Calendar Years 1941-1947

County	1941	'42	'43	'44	'45	'46	'47	'41	'42	'43	'44	'45	'46	'47
	Auditors other than for Motor Vehicle Torts							Master						
Barnstable	11	7	4	–	6	2	3	5	3	2	–	1	8	2
Berkshire	5	11	4	7	3	3	–	4	10	7	5	6	7	7
Bristol	17	19	6	2	4	7	3	22	24	11	7	11	19	26
Essex	33	13	9	8	2	6	9	32	25	10	7	6	24	24
Franklin	2	4	2	–	–	–	4	5	2	1	–	2	–	3
Hampden	39	33	26	15	6	5	3	20	11	8	5	3	11	13
Hampshire	2	7	–	–	–	–	2	3	5	–	1	1	4	4
Middlesex	130	20	6	2	6	7	6	73	44	7	4	6	14	19
Norfolk	13	6	3	5	7	11	5	20	12	–	–	1	4	18
Plymouth	2	2	2	3	–	–	2	8	11	6	8	6	8	10
Suffolk	114	78	5	23	9	30	12	165	77	31	24	22	22	28
Worcester	73	91	35	19	5	1	5	41	23	23	11	4	6	23
	441	291	102	83	48	72	54	398	247	107	72	69	127	177

Two or more cases tried together are counted as one reference.

Appointment of Auditors in motor tort cases was practically discontinued on November 1, 1942.

Expenditures Auditors and Masters

Calendar Years 1941–1947

	1941	1942	1943	1944	1945	1946	1947
Barnstable	$3,760.00	$2,954.80	$362.50	$387.50	$231.25	$380.00	$722.50
Berkshire	872.41	1,656.25	2,185.25	1,566.91	1,736.38	2,000.00	997.35
Bristol	10,665.00	5,597.50	3,347.50	2,362.06	3,071.26	3,655.00	4,327.75
Dukes County	–	50.00	75.00	–	–	–	–
Essex	18,353.05	6,042.83	3,403.52	905.73	1,250.00	2,503.34	4,919.54
Franklin	775.00	372.00	280.00	–	335.15	455.00	145.00
Hampden	10,016.74	6,429.30	2,765.00	2,318.07	1,492.50	1,848.75	1,985.25
Hampshire	507.50	2,140.25	267.50	111.45	171.25	165.00	283.00
Middlesex	35,590.02	24,870.87	5,403.28	4,791.25	2,822.50	3,558.45	3,817.25
Nantucket	–	–	–	–	–	–	–
Norfolk	9,657.50	5,636.25	1,045.00	648.75	1,100.00	1,666.25	3,302.75
Plymouth	4,086.25	2,850.50	1,423.75	3,539.33	3,441.25	1,395.00	2,958.46
Suffolk	69,464.09	48,574.50	25,902.68	11,420.75	11,125.50	6,773.50	9,998.03
Worcester	13,102.25	15,415.35	10,386.20	3,786.25	2,167.62	1,171.25	2,437.25
	$176,849.81	$122,590.90	$56,847.18	$31,838.05	$23,944.66	$25,571.54	$36,894.13

Note. In Suffolk County these figures apply to the Superior Court (Civil) only. In other counties to all Courts.

JURY CASES ADVANCED FOR TRIAL AND TRIED DURING YEAR ENDING JUNE 30, 1948

	Original Entries	Removed Cases	Total Advanced Cases Tried
Barnstable	None	None	None
Berkshire	10	1	11
Bristol			
Taunton	1	2	3
New Bedford	24	3	27
Fall River	–	3	3
Essex			
Salem	2	1	3
Lawrence	3	2	5
Newburyport	–	–	–
Franklin	–	–	–
Hampden	24	6	30
Hampshire	–	–	–
Middlesex			
Cambridge	11	12	23
Lowell	2	1	3
Norfolk	3	4	7
Plymouth			
Plymouth	8	5	13
Brockton	12	3	15
Suffolk	85	66	151
Worcester			
Worcester	8	10	18
Fitchburg	1	–	1
Total	194	119	313
Totals 1946–47	129	110	239
Totals 1944–45	155	90	225
Totals 1943–44	100	180	280

LAND COURT

This is a court of three judges created in 1898 for the registration of title to land and since then developed by additional extensions of jurisdiction both at law and in equity into the court in which almost all litigation regarding title to land takes place in addition to its original function of a court for the registration of title.

LAND COURT FIGURES FROM JULY 1, 1947 to JUNE 30, 1948

Registration Cases	636
Confirmation Cases	9
Post Registration Cases	873
Tax Lien Cases	622
Miscellaneous Cases	335
Equity Cases	567
Total cases entered	3,042
Decree plans made	505
Subdivision plans made	377
Total plans made	882
Total appropriation	$181,000.00
Fees sent State Treasurer	67,319.61
Income from Assurance Fund applicable to expenses	10,684.56
Unexpended balance	60.20
Net cost to Commonwealth	102,935.63
Assurance Fund Nov. 30, 1940	320,520.14
Assessed value of land on petitions for registration, confirmation	4,595,676.54
CASES DISPOSED OF BY FINAL ORDER DECREE OR JUDGMENT BEFORE HEARING	
Land Registration	508
Land Registration—Supplementary	873
Tax Foreclosure	1,030
Equity, Real Actions & Miscellaneous	654
Total cases disposed of	3,065

PROBATE COURTS

There is a probate court in each county with jurisdiction of wills, trusts, settlement of estates, guardianship, adoption, change of name, divorce and separate maintenance and a variety of other matters. There are three judges in Suffolk, two in Middlesex, Essex, Worcester and Hampden, one in each of the other counties.

The report prepared by the Administrative Committee of the Probate Courts for the year 1947 appears on page 92.

THE MUNICIPAL COURT OF THE CITY OF BOSTON

This court consists of a chief justice and eight associate justices, all full time judges. There are also six special justices. The tables showing the *details* of the civil business for the year 1947-8 will be found on pp. 78-79. The comparative table of civil business from 1913 to 1939 will be found in the 15th. Report, p. 65. The condensed civil and criminal business and other information for the year 1947 and the first 9 months of 1948 is as follows:

MUNICIPAL COURT OF THE CITY OF BOSTON

CIVIL ACTIONS (OTHER THAN SMALL CLAIMS CASES) 1945–48

YEAR	Entered	Removed	Per Cent	All Defaults	Per Cent of Entries	Tried	Per Cent of Entries	Total Plaintiff's Judgments	Average Plaintiff's Judgments Contract only	Heard, Appellate Division	Per Cent of Trials	To Supreme Judicial Court
1945	11,172	467	4.18	4,705	42.11	1,122	10.04	$1,207,772.23	168.63	24	2.14	3
1946	12,579	471	3.74	5,316	42.3	1,364	10.8	$1,538,471.30	$179.91	20	1.5	none
1947	15,268	685	4.5	6,003	39.3	1,621	10.6	$1,736,565.01	177.92	25	1.5	7
1948 9 mos.	12,939	632	4.9	5,437	42.0	1,141	8.8	$1,587,160.37	207.03	27	2.4	11

The jurisdictional limits in civil cases from 1866 to 1877 were $300; from 1877 to 1894, $1,000; from 1894 to 1922, $2,000; from 1922 to September 1, 1929, $5,000; since 1929, the jurisdiction has been unlimited in amount.

SUBDIVISION—CONTRACT AND TORT—1946-1948

YEAR	Entered		Removed				Tried	
	Contract	Tort	Contract	Per Cent of Entries	Tort	Per Cent of Entries	Contract	Tort
1946	7,903	3,753	209	2.6	254	6.6	514	583
1947	9,978	4,034	288	2.9	376	9.3	602	681
1948 9 mos.	8,619	3,314	250	2.9	321	9.7	410	442

TORT ENTRIES, REMOVALS AND TRIALS

1945

TORTS ENTERED		TORT REMOVALS		TORTS TRIED	
Motor Vehicle	2,163	Motor Vehicle, Plff	1	Motor Vehicle	276
Other Torts	971	Motor Vehicle, Deft	263	Other Torts	171
		Other Torts	18		
Total	3,134	Total	282	Total	447

1946

Motor Vehicle	2,922	Motor Vehicle, Plff	...	Motor Vehicle	333
Other Torts	831	Motor Vehicle, Deft	231	Other Torts	250
		Other Torts	23		
Total	3,753	Total	234	Total	583

1947

Motor Vehicle	3,193	Motor Vehicle, Plff	...	Motor Vehicle	442
Other Torts	841	Motor Vehicle, Deft	361	Other Torts	239
		Other Torts	15		
Total	4,034	Total	376	Total	681

1948 (9 Months January 1–October 1)

Motor Vehicle	2,727	Motor Vehicle, Plff	...	Motor Vehicle	294
Other Torts	587	Motor Vehicle, Deft.	285	Other Torts	148
		Other Torts	36		
Total	3,314	Total	321	Total	442

Summary Process (Ejectment) Entries

1944	318
1945	423
1946	483
1947	775
1948 (9 months)	580

Supplementary Process Entries

1944	1,716
1945	1,712
1946	1,824
1947	1,760
1948 (9 months)	1,560

SMALL CLAIM DIVISION

	1947			1948 (9 months)		
	Contract	Tort	Total	Contract	Tort	Total
Actions Entered	944	377	1,321	940	273	1,213
Actions Settled	171	115	286	156	98	254
Counter-Claims or Set-Offs	3	12	15	21	14	35
Trials	230	194	424	152	171	323
Reserved	90	120	210	66	51	117
Finding for Plaintiff	173	155	328	113	138	251
Finding for Defendant	57	50	107	38	31	69
Judgments by Default	504	81	585	527	59	586
Judgments by Non-Suit	15	11	26	12	7	19
Amount of Plaintiff's Judgments	$16,014.91	$4,072.97	$20,087.88	$15,680.51	$3,704.54	$19,385.05
Transferred to Regular Civil Docket	4	8	12	4	4	8
Removed to Superior Court	1	14	15	1	3	4
Executions	433	175	608	383	125	508
Amount of Plaintiff's Claims	$23,781.64	$12,254.18	$36,035.82	$26,871.83	$8,695.33	$35,567.16
Notices Returned Unclaimed	215	22	237	217	27	244

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CRIMINAL BUSINESS

October 1, 1947 — September 30, 1948

Total Business of Court

1.	Automobile Violations	1,282
2.	Traffic Violations	26,037
3.	Domestic Relations	488
4.	Drunkenness in Court	6,564
5.	Drunkenness Released by Probation Officer	8,153
6.	Other Criminal Cases	4,677
7.	Inquests entered	27
8.	Search Warrants issued	90
9	Complains heard but denied	663
10.	Grand Total Business	47,981

Dispositions

1.	Pleas of Guilty	21,397
2.	Pleas of Not Guilty	2,915
3.	Placed on file before trial, after trial dismissed, nol-prossed, quashed, etc.	9,610
4.	Defendants not arrested, pending for trial	3,047
5.	Defendants acquitted	898
6.	Defendants bound over to Grand Jury	771
7.	Defendants placed on probation (not including) surrenders	2,333
8.	Defendants fined and paid	18,229
9.	Imprisonments	1,886
10.	Fines appealed	225
11.	Imprisonment appealed	719
12.	Defendants pending for sentence	20

Non-Criminal Parking Law

1.	Parking tags turned in by violators as issued by Police	163,416

Finances

1.	Money received by parking-tag office	$63,130
2.	Money received from court fines, forfeitures and Fee, etc.	84,825
3.	Total moneys received and turned over to Comm. County, City of Boston, etc.	147,955
4.	Moneys received as bail by Court and forwarded to Superior Court or returned to defendant	319,148
5.	Total moneys handled by the Court	467,103

The Boston Juvenile Court

The Boston Juvenile Court, created in 1906, is a separate court with jurisdiction in juvenile cases in the central district of Boston. It has one judge and two special justices.

Complaints — October 1, 1947-September 1, 1948

	Boys	*Girls*	*Totals*
Juvenile Criminal	9	0	9
Delinquent	355	120	475
Wayward	0	2	2
	364	122	486

Adults	
Men	50
Women	21
Total	71

Neglected Children — 23 complaints representing 59 children

Active Delinquent Cases		*Active Adult Cases*		*Active Neglected Children Cases*
Boys	154	Men	30	58 cases, representing 114 children.
Girls	88	Women	27	
	242		57	

APPELLATE TAX BOARD

The Appellate Tax Board is an administrative tribunal, to which have been transferred some of the functions formerly imposed on the Superior Court. It came into existence under St. 1937, c. 400, on May 29, 1937, succeeding the old Board of Tax Appeals created in 1931 and later abolished.

The following tables show the number and distribution of appeals. Comparative figures since 1931 may be found in earlier reports. More detailed statistical information appears in the annual report of the board to the legislature.

1948 (Year Ending June 30)

Combined Formal and Informal Procedure (Real Estate Appeals)

The State (taken as a whole)	*1948*
Appeals pending at beginning of year	9,347
Appeals entered (net) during year	4,371
Total number before Board during year	13,718
Less: Settled or withdrawn during year	4,871
Net total to be decided by Board	8,847
Appeals decided by Board during year	893
Appeals pending at end of year	7,954
BOSTON	
Appeals pending at beginning of year	8,224
Appeals entered (net) during year	3,387
Total number before Board during year	11,611
Less: Settled or withdrawn during year	3,904
Net total to be decided by Board	7,707
Appeals decided by Board during year	664
Appeals pending at end of year	7,043
OUTSIDE	
Appeals pending at beginning of year	1,123
Appeals entered (net) during year	984
Total number before Board during year	2,107
Less: Settled or withdrawn during year	967
Net total to be decided by Board	1,140
Appeals decided by Board during year	229
Appeals pending at end of year	911

Real Estate Appeals Filed With Appellate Tax Board
July 1, 1947–June 30, 1948
(Arranged by Counties)

Barnstable		**Hampden**		Franklin	1
Barnstable	1	Chicopee	3	Needham	2
Bourne	2	Longmeadow	1	Quincy	44
Chatham	2	Springfield	21	Sharon	1
Dennis	1	West Springfield	1	Wellesley	1
Falmouth	2	Westfield	1	Weymouth	1
Sandwich	1			Wrentham	1
Yarmouth	2	**Hampshire**			
		Amherst	1	**Plymouth**	
Berkshire				Bridgewater	1
Becket	1	**Middlesex**		Brockton	54
Great Barrington	2	Arlington	2	Hull	2
Lenox	2	Bedford	1	Marion	1
Richmond	1	Belmont	4	Norwell	1
Sheffield	1	Cambridge	114	Pembroke	2
		Everett	11		
Bristol		Lexington	7		
Fall River	85	Lowell	83	**Suffolk**	
New Bedford	5	Malden	60	Boston	3387
Taunton	4	Medford	43	Chelsea	29
Westport	1	Natick	3	Revere	40
		Newton	5	Winthrop	4
Dukes		Reading	2		
Gay Head	23	Somerville	99	**Worcester**	
		Stoneham	1	Clinton	1
Essex		Tewksbury	1	Fitchburg	4
Beverly	8	Townsend	1	Holden	1
Danvers	1	Waltham	5	Lancaster	6
Gloucester	5	Watertown	10	Leominster	9
Haverhill	9	Weston	1	Milford	4
Ipswich	1	Wilmington	1	Millville	2
Lawrence	4	Winchester	2	North Brookfield	1
Lynn	4	Woburn	1	Spencer	2
Marblehead	1			Warren	1
Methuen	2	**Norfolk**		Worcester	40
Nahant	2	Braintree	11		
Rockport	2	Brookline	42		
Salem	4	Canton	1	**Total**	4371
Saugus	7	Cohasset	3		

Real Estate Appeals Pending on June 30, 1948
(Arranged by Cities and Towns)

Boston	7043	Brockton	71	Medford	28
Lowell	117	Worcester	65	Gay Head	23
Cambridge	104	Quincy	44	Chelsea	22
Somerville	84	Brookline	41	Malden	21
Fall River	73	Revere	41	Springfield	14
52 other Cities and Towns (1–10 appeals)					163
Total number of real estate appeals pending					7,954

Appeals *vs.* Commissioner of Corporations and Taxes 1931-1948

	1931	1932	1933	1934	1935	1936	1937	1938	1939
Pending at beginning of year	0	27	26	24	16	30	383	392	262
Entered during year	66	47	42	25	31	374	37	58	115
Total	66	74	68	49	47	404	420	450	377
Settled or withdrawn during year	9	14	17	15	8	14	12	161	202
Net	57	60	51	34	39	390	408	289	175
Decided	30	34	27	18	9	7	16	27	35
Pending at end of year	27	26	24	16	30	383	392	262	140

	1940	1941	1942	1943	1944	1945	1946	1947	1948
Pending at beginning of year	140	154	188	168	171	70	175	248	209
Entered during year	88	85	61	56	67	177	220	205	134
Total	228	239	249	224	238	247	395	453	343
Settled or withdrawn during year	34	26	57	32	126	32	44	94	131
Net	194	213	192	192	112	215	351	359	212
Decided	40	25	24	21	42	40	103	150	72
Pending at end of year	154	188	168	171	70	175	248	209	140

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

Summary, 1947

	Actions Entered—Total	Actions Removed to Superior Civil Court—Total	Actions Defaulted	Intz. Filed		Marked for		Trial List				Findings		Appellate Division											
				To Plaintiff	To Defendant	Motion List	Trial List	Non-Suits	Defaults	Tried	Reserved	For Plaintiff	For Defendant	Requests for Report	Reports Allowed	Reports Dis-Allowed	Petitions to Establish	Reports Proved	Cases Heard	Cases Decided	Affirmed	Reversed	Modified	Entire Re-Trial Ordered	Partial Re-Trial Ordered
Contract	9,978	288	5,388	148	777	—	—	—	—	602	362	487	139	24	14	7	2	—	12	6	8	2	—	1	—
Tort	4,034	376	254	2,683	1,631	—	—	—	—	681	489	388	331	17	10	5	1	1	12	3	5	2	—	—	—
Contract or Tort	381	20	55	41	62	—	—	—	—	57	52	—	19	3	1	1	—	—	1	—	1	—	—	—	—
All Others	875	1	306	1	10	—	—	—	—	281	62	201	98	2	—	—	—	—	—	—	—	—	—	—	—
Totals	15,268	685	6,003	2,873	2,480	3,001	9,569	144	477	1,621	965	1,076	587	46	25	13	3	1	25	9	14	4	—	1	—
1948 — January 1 – October 1 — 9 Months																									
Totals	12,939	632	5,437	2,090	1,853	2,485	6,719	51	319	1,141	715	757	372	52	27	8	1	—	27	20	17	2	4	—	1

MUNICIPAL COURT OF THE CITY OF BOSTON FOR CIVIL BUSINESS

SUMMARY, 1947—*Continued*

	Appellate Division—*Con.*							Defendants' Judgments					Neither Party by Agreement	Plaintiffs' Judgments							Executions Issued	Actions Transferred under Chapter 369, Acts 1943
	Motions	Cases Consolidated Under Stat. 1935 C. 483	Appeals to Supreme Judicial Court	Appeals to Supreme Judicial Court—Perfected	Appeals to Supreme Judicial Court—Affirmed	Appeals to Supreme Judicial Court—Reversed	Appeals to Superior Civil Court	Entered by Non-Suit	Entered by Trial—Open Court	Entered by Trial—After Reservation	Entered by Agreement	Total Defendants' Judgments		Entered by Default	Entered by Trial—Open Court	Entered by Trial—After Reservation	Entered by Agreement	Total Plaintiffs' Judgments	Amount of Plaintiffs' Judgments	Average Amount of Plaintiffs' Judgments		
Contract.....	4	4	4	—	—	—	—	24	38	101	28	191	223	5,491	202	285	813	6,791	$1,208,276.25	$177.92	6,360	—
Tort.....	22	41	3	2	2	—	—	110	57	274	26	467	302	24	137	251	2,383	2,795	528,288.76	189.01	645	107
Contract or Tort.	1	2	—	—	1	—	—	6	3	16	2	27	1	—	—	—	—	—	—	—	—	—
All Others.....	—	—	—	—	—	—	50	1	59	39	1	100	1	78	160	41	100	379	—	—	256	—
Totals.....	27	47	7	2	3	—	50	141	157	430	57	785	527	5,593	499	577	3,296	9,965	$1,736,565.01	$174.27	7,261	107

1948 — JANUARY 1 – OCTOBER 1 — 9 MONTHS — *Continued*

Totals.....[b]	40	70	11	6	5	—	30	89	89	283	63	524	336	4,936	337	420	2,601	8,294	$1,587,160.37	$191.36	6,033	60

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CRIMINAL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1948

Counties	CRIMINAL CASES													
	Number remaining at first of year.	Number of Indictments returned.	Number of appeal cases entered.	Appeals withdrawn before sitting following Entry.	Appeals withdrawn after next sitting, under St. 1937, c. 311.	Number of actions on bail bonds for recognizances entered.	Number disposed of in previous years brought forward for redisposition.	Indictments waived.	Number disposed of during year.	Number remaining at end of year.	Number tried during year.	Number awaiting trial at end of year.	Number of days during which a Superior Court judge has sat for trials, hearings or dispositions.	Days District Court judges were called in to sit in Superior Court.
Barnstable	30	91	64	4	11	0	2	2	129	45	19	15	9	9
Berkshire	75	31	115	29	12	0	0	28	97	111	18	63	26	0
Bristol	27	383	398	77	4	0	9	31	686	81	151	49	70	42
Dukes	0	3	12	6	0	0	0	0	7	2	4	2	3	0
Essex	80	376	622	139	66	1	16	123	904	109	149	106	68	19
Franklin	15	29	25	20	3	0	0	0	37	9	3	4	9	0
Hampden	72	110	137	13	21	0	1	26	255	57	42	54	49	9
Hampshire	70	48	35	12	5	0	14	1	89	62	21	17	17	5
Middlesex	551	861	649	43	48	11	47	43	1,635	527	326	438	207	19
Nantucket	1	3	2	0	0	0	0	0	5	1	5	1	3	0
Norfolk	449	382	245	20	55	0	60	14	982	101	102	99	39	22
Plymouth	194	482	245	52	3	0	167	17	906	97	114	8	51	25
Suffolk	325	1,138	2,483	82	89	5	250	48	3,560	443	834	381	493	63
Worcester	127	253	322	24	19	0	39	66	662	107	154	95	87	48
Total	2,016	4,190	5,354	521	336	17	605	399	9,954	1,752	1,942	1,332	1,131	261

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1948

MADE BY THE CLERKS OF COURT TO THE JUDICIAL COUNCIL IN COMPLIANCE WITH ST. 1936, C. 31, § 3

CIVIL CASES

Table 1 — NUMBER UNDISPOSED OF AT BEGINNING OF YEAR

COUNTY	LAW								EQUITY	DIVORCE AND NULLITY	TOTAL JURY CASES	TOTAL NON-JURY
	JURY CASES				NON-JURY							
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others				
Barnstable	90	119	34	20	61	14	4	7	43	0	263	86
Berkshire	50	98	31	11	36	17	8	14	146	0	190	75
Bristol	275	1,418	303	23	64	34	26	20	163	0	2,019	144
Dukes	4	5	6	1	3	0	0	0	0	0	16	3
Essex	401	1,592	382	47	66	57	21	11	219	0	2,422	155
Franklin	10	38	5	6	10	4	2	2	17	1	59	18
Hampden	191	1,000	231	60	90	26	8	41	203	2	1,482	165
Hampshire	30	124	19	1	9	4	0	9	34	110	174	22
Middlesex	635	4,645	1,018	73	161	92	53	68	519	1	6,371	374
Nantucket	0	2	0	0	8	1	0	0	0	0	2	9
Norfolk	321	1,194	343	55	87	45	28	82	225	0	1,913	242
Plymouth	93	309	70	10	17	10	2	10	50	0	482	39
Suffolk	1,118	6,336	2,915	730	345	269	159	407	1,445	7	11,099	1,180
Worcester	454	2,375	620	41	135	94	38	35	276	0	3,490	302
Totals	3,672	19,255	5,977	1,078	1,092	667	349	706	3,340	121	29,982	2,814
Combined Totals	29,982				2,814							
	Total undisposed of all kinds 36,257											

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1948—*Continued*

CIVIL CASES

Table 2 — Number of New Cases Entered During the Year

County	Original Writs				Removals from District Courts								Equity	Divorce and Nullity	All Others
					By Plaintiff or Order of Ct.				By Defendant						
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others			
Barnstable	62	55	24	19	0	0	0	0	16	14	2	0	32	0	0
Berkshire	34	197	22	10	0	0	0	3	13	2	3	13	48	1	0
Bristol	130	136	131	17	0	0	0	13	117	233	29	17	113	0	0
Dukes	2	1	4	0	0	0	0	0	0	0	1	0	0	0	0
Essex	368	1,121	289	0	1	61	1	0	145	555	58	42	225	0	57
Franklin	12	55	16	1	0	0	0	0	5	10	1	0	15	0	5
Hampden	238	1,060	224	74	3	0	0	3	64	135	22	0	172	0	0
Hampshire	28	109	20	9	0	1	0	0	7	19	4	2	19	61	0
Middlesex	469	2,386	647	134	0	0	0	50	198	1,183	113	79	503	2	0
Nantucket	7	0	0	9	0	0	0	0	1	0	0	0	0	0	0
Norfolk	143	556	137	165	0	0	0	0	66	218	35	0	115	0	0
Plymouth	57	222	57	1	0	0	0	0	26	113	6	0	92	1	0
Suffolk	1,524	4,502	2,060	455	9	106	12	11	429	945	142	32	1,194	3	0
Worcester	272	1,407	329	5	1	13	2	7	88	305	33	28	232	0	72
Total	3,346	11,807	3,960	899	14	181	15	87	1,175	3,732	449	213	2,760	68	134
Combined Totals	20,012				297				5,569				2,962		
Total removals	5,866														
Grand Total Entries	28,840														

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1948—*Continued*

County	CIVIL CASES											
	Table 3		Number of Trials Cases Tried									
			Jury				Non-Jury					
	Total Jury Trials	Total Non-Jury Trials Incl. Eq. and Div.	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Equity	Divorce and Nullity
Barnstable	14	2	4	10	0	0	1	1	0	0	0	0
Berkshire	21	9	5	10	4	2	1	3	1	1	2	1
Bristol	201	29	22	159	20	0	10	2	2	0	15	0
Dukes	1	0	0	1	0	0	0	0	0	0	0	0
Essex	286	74	46	197	38	5	14	14	6	3	37	0
Franklin	17	1	3	13	1	0	0	0	0	0	0	1
Hampden	283	67	23	190	62	8	16	3	5	3	40	0
Hampshire	38	53	4	31	3	0	1	2	1	1	0	48
Middlesex	287	138	27	220	29	11	8	24	5	10	91	0
Nantucket	1	1	1	0	0	0	1	0	0	0	0	0
Norfolk	147	5	14	111	16	6	2	0	0	3	0	0
Plymouth	100	20	9	70	18	3	1	2	2	5	10	0
Suffolk	830	429	129	503	177	21	58	44	31	40	255	1
Worcester	169	54	23	135	9	2	14	4	1	5	30	0
Total	2,395	882	310	1,650	377	58	117	99	54	71	480	50
Total trials			2,746								531	
			3,277									

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1948—*Continued*

CIVIL CASES

Table 4 — Number of Jury Verdicts

County	For Plaintiff																		For Defendant					
	Ordered			Not Ordered			Less than $200			$200 to $500			$500 to $1,000			Over $1,000			Ordered			Not Ordered		
	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts
Barnstable	0	0	0	0	0	0	0	0	0	1	0	0	1	2	0	0	3	0	1	0	0	1	4	0
Berkshire	0	0	0	1	5	3	0	0	2	0	1	1	1	0	0	0	4	0	0	0	0	4	5	1
Bristol	0	0	0	8	67	9	0	15	2	2	8	1	5	10	1	1	35	4	0	0	2	5	40	4
Dukes	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	1	0	0	0	0	0	0	8
Essex	1	0	0	19	74	10	1	13	0	5	20	3	1	18	3	13	23	4	3	0	1	6	55	5
Franklin	0	0	0	1	9	0	0	0	0	0	2	0	1	4	0	0	3	0	1	2	0	1	2	1
Hampden	0	10	0	15	75	28	3	16	4	6	28	5	4	22	7	3	22	12	2	1	15	9	65	7
Hampshire	0	0	0	1	20	1	0	4	0	0	1	1	0	1	0	1	14	0	0	2	2	1	2	0
Middlesex	0	0	1	15	134	20	1	26	3	3	32	3	4	28	8	7	48	6	1	18	2	10	69	8
Nantucket	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Norfolk	0	0	0	4	37	5	0	7	0	0	6	1	1	9	0	3	15	5	1	1	5	21	30	5
Plymouth	0	0	0	5	23	2	0	0	0	1	1	0	1	6	2	3	16	0	0	8	2	3	12	8
Suffolk	5	0	1	74	254	85	8	54	10	19	72	8	19	45	21	33	83	47	15	34	30	35	215	61
Worcester	0	0	0	14	64	16	0	7	1	3	10	3	4	16	4	7	31	8	1	2	3	5	35	3
Totals	6	10	2	157	762	179	13	142	22	40	181	29	43	161	46	71	298	86	25	68	62	101	534	111
	Total for Plaintiff 2,248																		Total for Defendant 901					

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1948—*Continued*

CIVIL CASES

Table 5 NUMBER OF NON-JURY FINDINGS

County	Findings for Plaintiff												Findings for Defendant		
	Less than $200			$200 to $500			$500 to $1,000			Over $1,000					
	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts
Barnstable	1	1	0	0	1	0	0	0	0	0	0	0	0	0	0
Berkshire	0	0	0	1	2	0	0	0	0	0	1	0	0	0	0
Bristol	0	0	0	0	1	0	1	0	0	1	0	0	8	1	2
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	5	5	0	0	3	0	1	2	1	2	2	1	6	1	1
Franklin	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hampden	1	2	0	4	4	0	0	0	0	0	0	2	11	0	6
Hampshire	0	1	1	1	0	0	0	0	0	0	0	0	0	1	0
Middlesex	0	4	0	0	2	0	1	2	1	2	0	0	5	16	14
Nantucket	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Norfolk	1	0	0	1	0	0	1	0	0	0	0	0	2	1	0
Plymouth	0	0	0	0	0	0	1	0	0	0	0	0	1	1	2
Suffolk	14	12	4	7	11	4	6	4	3	15	2	12	16	15	8
Worcester	0	0	0	1	0	0	0	1	0	6	0	0	3	3	0
Total	22	25	5	15	24	4	11	9	5	26	5	15	53	39	33
Combined Totals	52			43			25			46			125		
	Total for plaintiff 166												For defendant 125		

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1948—*Continued*

CIVIL CASES

Table 4

NUMBER OF JURY VERDICTS

COUNTY	FOR PLAINTIFF																		FOR DEFENDANT					
	ORDERED			NOT ORDERED			LESS THAN $200			$200 TO $500			$500 TO $1,000			OVER $1,000			ORDERED			NOT ORDERED		
	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts
Barnstable	0	0	0	0	0	0	0	0	0	1	0	0	1	2	0	0	3	0	1	0	0	1	4	0
Berkshire	0	0	0	1	5	3	0	0	2	0	1	1	1	0	0	0	4	0	0	0	0	4	5	1
Bristol	0	0	0	8	67	9	0	15	2	2	8	1	5	10	1	1	35	4	0	0	2	5	40	4
Dukes	0	0	0	0	0	0	0	0	0	0	0	3	0	0	0	0	1	0	0	0	0	0	0	8
Essex	1	0	0	19	74	10	1	13	0	5	20	3	1	18	3	13	23	4	3	0	1	6	55	5
Franklin	0	0	0	1	9	0	0	0	0	0	2	0	1	4	0	0	3	0	1	2	0	1	2	1
Hampden	0	10	0	15	75	28	3	16	4	6	28	5	4	22	7	3	22	12	2	1	15	9	65	7
Hampshire	0	0	0	1	20	1	0	4	0	0	1	1	0	1	0	1	14	0	0	2	2	1	2	0
Middlesex	0	0	1	15	134	20	1	26	3	3	32	3	4	28	8	7	48	6	1	18	2	10	69	8
Nantucket	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Norfolk	0	0	0	4	37	5	0	7	0	0	6	1	1	9	0	3	15	5	1	1	5	21	30	5
Plymouth	0	0	0	5	23	2	0	0	0	1	1	0	1	6	2	3	16	0	0	8	2	3	12	8
Suffolk	5	0	1	74	254	85	8	54	10	19	72	8	19	45	21	33	83	47	15	34	30	35	215	61
Worcester	0	0	0	14	64	16	0	7	1	3	10	3	4	16	4	7	31	8	1	2	3	5	35	3
Totals	6	10	2	157	762	179	13	142	22	40	181	29	43	161	46	71	298	86	25	68	62	101	534	111
	Total for Plaintiff 2,248																		Total for Defendant 901					

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1948—*Continued*

CIVIL CASES

Table 5 NUMBER OF NON-JURY FINDINGS

County	Findings for Plaintiff												Findings for Defendant		
	Less than $200			$200 to $500			$500 to $1,000			Over $1,000					
	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts	Contracts	Motor Torts	Other Torts
Barnstable	1	1	0	0	1	0	0	0	0	0	0	0	0	0	0
Berkshire	0	0	0	1	2	0	0	0	0	0	1	0	0	0	0
Bristol	0	0	0	0	1	0	1	0	0	1	0	0	8	1	2
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Essex	5	5	0	0	3	0	1	2	1	2	2	1	6	1	1
Franklin	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hampden	1	2	0	4	4	0	0	0	0	0	0	2	11	0	6
Hampshire	0	1	1	1	0	0	0	0	0	0	0	0	0	1	0
Middlesex	0	4	0	0	2	0	1	2	1	2	0	0	5	16	14
Nantucket	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0
Norfolk	1	0	0	1	0	0	1	0	0	0	0	0	2	1	0
Plymouth	0	0	0	0	0	0	1	0	0	0	0	0	1	1	2
Suffolk	14	12	4	7	11	4	6	4	3	15	2	12	16	15	8
Worcester	0	0	0	1	0	0	0	1	0	6	0	0	3	3	0
Total	22	25	5	15	24	4	11	9	5	26	5	15	53	39	33
Combined Totals	52			43			25			46			125		
	Total for plaintiff 166												For defendant 125		

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1948—*Continued*

County	CIVIL CASES																Equity	Div. and Nul.
	Table 6 — Finally Disposed Of																	
	Jury								Non-Jury									
	On Auditor's Report				Otherwise				On Auditor's Report				Otherwise					
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	0	0	0	0	39	70	10	9	0	0	0	0	35	6	3	4	16	0
Berkshire	0	0	0	0	33	137	34	12	1	0	0	0	13	17	4	12	69	1
Bristol	0	0	0	0	113	690	87	15	0	0	0	0	34	21	12	24	73	0
Dukes	0	0	0	0	0	0	0	0	0	0	0	0	1	2	0	0	0	0
Essex	0	0	0	0	217	1,224	250	24	0	0	0	0	105	66	24	38	226	0
Franklin	0	0	0	0	10	48	11	2	0	0	0	0	2	3	0	1	5	0
Hampden	0	0	0	0	141	911	172	43	0	0	0	0	74	32	7	37	111	1
Hampshire	0	0	0	0	21	100	9	3	0	0	0	0	4	2	0	4	17	64
Middlesex	1	0	0	0	302	2,527	398	78	0	0	0	0	82	58	14	98	331	1
Nantucket	0	0	0	0	1	0	0	0	0	0	0	0	4	1	0	0	0	0
Norfolk	0	0	0	0	237	945	222	62	0	0	0	0	76	44	22	109	204	0
Plymouth	0	0	0	0	99	234	51	7	0	0	0	0	19	8	6	19	53	0
Suffolk	4	0	0	0	940	4,000	1,503	158	2	0	0	0	459	235	105	297	1,412	0
Worcester	2	0	0	0	181	1,344	229	13	0	0	0	0	68	56	12	54	152	0
Total	7	0	0	0	2,334	12,230	2,976	426	3	0	0	0	976	551	209	697	2,669	67
Combined Totals	7				17,966				3				2,433				2,669	67
Total disposed of	23,145																	

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1948—*Continued*

County	CIVIL CASES													
	Table 7 — Cases Triable I. B. at Issue and Awaiting Trial and not Marked Inactive													
	Jury				Non-Jury				Triable but Enjoined				Equity	Divorce and Nullity
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	68	106	37	6	25	5	6	8	0	0	0	0	24	0
Berkshire	38	105	14	13	15	7	4	5	0	0	0	0	39	0
Bristol	329	1,340	330	25	46	44	15	16	0	0	0	0	75	0
Dukes	6	3	11	1	2	0	0	0	0	0	0	0	0	0
Essex	500	1,431	447	63	68	44	13	13	0	5	0	0	90	0
Franklin	9	47	8	5	6	6	5	3	0	0	0	0	22	0
Hampden	256	1,209	249	75	118	49	11	44	0	0	0	0	251	1
Hampshire	24	0	23	1	10	0	3	4	0	0	0	0	14	83
Middlesex	844	5,581	1,311	133	200	123	71	90	0	69	8	0	249	0
Nantucket	2	0	0	0	0	0	1	0	0	0	0	0	0	0
Norfolk	234	975	272	15	40	56	19	34	0	0	0	0	119	0
Plymouth	99	385	14	9	14	7	2	4	0	0	0	0	36	1
Suffolk	1,800	6,961	2,197	249	430	277	123	144	0	43	0	0	511	3
Worcester	441	2,546	647	48	73	38	23	18	0	15	0	0	150	0
Totals	4,650	20,689	5,560	643	1,047	656	296	383	0	132	8	0	1,580	88
Combined Totals	31,542				2,382				140				1,580	88

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1948—*Continued*

CIVIL CASES

Table 8 — Cases Remaining Undisposed of Including Cases Marked Inactive

County	Jury				Non-Jury				Equity	Divorce and Nullity
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	96	117	46	19	59	9	5	14	59	0
Berkshire	57	152	21	20	29	8	5	7	125	0
Bristol	364	1,553	364	29	75	57	26	22	203	0
Dukes	6	3	11	1	2	0	0	0	7	0
Essex	531	1,483	462	76	102	58	15	8	239	0
Franklin	12	51	9	6	13	5	4	5	27	1
Hampden	261	1,225	258	77	122	49	11	50	264	1
Hampshire	33	151	31	1	16	4	3	13	36	107
Middlesex	865	5,645	1,322	129	207	125	74	102	689	2
Nantucket	4	1	0	0	12	0	1	1	0	0
Norfolk	244	988	286	17	48	59	19	46	150	0
Plymouth	106	411	75	10	22	11	3	12	87	1
Suffolk	1,280	6,760	3,411	789	302	112	115	348	1,227	10
Worcester	531	2,706	738	71	168	88	43	50	346	0
Totals	4,390	21,246	7,034	1,245	1,177	585	324	678	3,469	122
Combined Totals	33,915				2,764				3,459	122

Total undisposed of, all kinds—40,260

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1948—*Continued*

CIVIL CASES

Table 9 CASES MARKED INACTIVE IN PREVIOUS YEARS

County	Jury				Non-Jury				Equity	Divorce and Nullity
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	16	10	4	11	13	0	0		6	0
Berkshire	12	5	1	1	12	1	0	0	37	0
Bristol	2	10	0	0	2	1	2	0	1	0
Dukes	2	0	2	0	2	0	0	0	1	0
Essex	2	20	7	8	3	0	0	0	1	0
Franklin	3	6	0	1	0	0	0	0	0	0
Hampden	4	14	7	2	2	0	0	3	8	0
Hampshire	4	0	4	0	1	1	0	3	5	13
Middlesex	19	78	26	2	9	2	3	1	32	0
Nantucket	0	1	0	0	6	0	0	0	0	0
Norfolk	5	9	6	5	5	0	0	0	4	0
Plymouth	0	3	0	1	1	0	0	0	0	5
Suffolk	72	214	146	6	56	35	23	9	8	1
Worcester	28	67	27	10	32	6	4	8	32	0
Totals	169	437	230	47	144	46	32	24	135	19
Combined Totals	883				246				135	19

Total of all kinds marked inactive in previous years—1,283

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1948—*Continued*

County	CIVIL CASES									
	Table 10 — Cases Marked Inactive During the Year									
	Jury				Non-Jury				Equity	Divorce and Nullity
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others		
Barnstable	5	1	5	0	8	0	0	0	2	0
Berkshire	2	1	2	3	1	1	1	0	18	0
Bristol	9	20	12	4	7	7	1	1	18	0
Dukes	0	0	0	0	0	0	0	0	0	0
Essex	6	19	9	1	1	1	0	0	7	0
Franklin	2	1	0	0	3	0	0	0	1	0
Hampden	13	41	15	2	14	1	3	9	19	1
Hampshire	1	0	2	1	2	0	0	0	2	8
Middlesex	31	79	29	5	20	3	3	6	53	0
Nantucket	2	0	0	0	6	0	0	1	0	0
Norfolk	4	9	4	0	1	0	1	0	2	0
Plymouth	0	5	0	0	0	0	6	0	0	0
Suffolk	15	83	48	7	16	5	4	9	24	0
Worcester	36	69	52	0	15	0	3	1	26	0
Total	126	328	178	23	94	18	22	27	172	9
Combined Totals	655				161				172	9
	Total marked inactive of all kinds—997									

ABSTRACT AND TABULAR STATEMENT OF THE RETURNS RELATIVE TO THE CIVIL BUSINESS OF THE SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1948—*Continued*

COUNTY	CIVIL CASES										Table 12	
	Table 11 — Inactive Cases Dismissed During Year										Number of Days in which Court Sat	
	Jury				Non-Jury				Equity	Divorce and Nullity	Jury	Non-Jury Including Equity and Motion and Pre-Trial Sessions
	Contracts	Motor Torts	Other Torts	All Others	Contracts	Motor Torts	Other Torts	All Others				
Barnstable	10	7	1	1	12	0	0	3	1	0	25	2
Berkshire	3	4	1	0	5	0	2	2	24	0	37	14
Bristol	0	1	0	0	0	0	0	0	0	0	152	27
Dukes	0	0	0	0	0	0	0	0	0	0	0	0
Essex	0	1	1	0	0	0	0	0	3	0	257	89
Franklin	0	0	0	1	0	0	0	0	0	0	22	8
Hampden	0	11	3	0	0	0	0	0	0	0	191	88
Hampshire	11	0	2	0	0	0	0	3	4	3	25	7
Middlesex	10	28	7	4	1	0	0	0	3	0	480	186
Nantucket	0	0	0	0	0	0	0	0	0	0	2	1
Norfolk	1	13	0	0	1	0	0	0	0	0	147	15
Plymouth	0	0	0	0	1	0	0	0	0	0	89	24
Suffolk	7	38	10	0	15	6	4	11	4	0	1,150	819
Worcester	7	22	7	3	3	0	0	0	2	0	260	52
Totals	49	125	32	9	38	6	6	19	41	3	2,837	1,332
Combined Totals	215				69				41	3	4,169 days	

Total dismissed all kinds—328

REPORTS OF REGISTERS OF PROBATE FOR YEAR ENDING DEC. 31, 1947

(Table prepared by the Administrative Committee of the Probate Courts)

	Probate—Decrees															Divorces		Fees Collected				
	Original entries (New Cases)	Administrations Allowed	Wills allowed	Guardians Appointed	Conservators Appointed	Trustees Appointed	Accounts Allowed	Real Estate Sales	Real Estate Mortgages	Real Estate Partitions	Equity Decrees	Separate Support	Desertion and Living Apart	Custody	Other Decrees and Orders Entered	Papers Recorded	Original Entries (New Cases)	Decrees and Orders Entered: Nisi	Decrees and Orders Entered: Others	Probate	Divorce	Certificates and Copies	Total	Commitment, Insane Feeble Minded
Barnstable	464	153	184	38	15	36	456	121	6	9	13	3	2	1	192	2,500	178	134	10	$3,275.15	$875.00	$1,692.96	$5,843.11	4
Berkshire	1,048	353	279	106	24	36	736	201	9	11	16	29	15	15	373	4,065	345	243	96	5,458.00	1,815.00	3,214.25	10,487.25	1
Bristol	2,264	916	546	183	51	71	797	441	6	26	16	83	9	5	1,629	8,101	1,012	780	505	10,293.00	5,055.00	5,459.92	20,807.92	14
Dukes	93	38	35	3	4	5	77	19	–	3	1	1	–	–	28	527	22	18	12	611.00	110.00	273.25	994.25	–
Essex	3,500	1,452	937	300	97	170	2,201	747	18	27	31	84	11	7	1,811	11,675	1,134	1,041	909	19,691.00	5,665.00	10,099.55	35,455.55	–
Franklin	510	164	145	36	8	18	313	98	–	10	–	6	–	–	224	3,089	111	83	23	2,738.00	550.00	1,204.60	4,492.60	–
Hampden	2,117	802	466	145	62	42	1,502	322	1	10	58	63	3	13	817	11,377	1,097	810	393	10,858.00	5,485.00	6,322.90	22,665.90	24
Hampshire	1,631	202	149	40	8	6	380	83	–	3	–	4	–	1	146	2,599	43	28	8	2,862.00	215.00	1,167.20	4,244.20	–
Middlesex	6,504	2,644	1,764	551	187	305	4,647	1,114	53	31	91	166	18	30	4,321	24,820	2,379	1,884	1,734	36,873.00	11,815.00	23,686.90	72,374.90	53
Nantucket	51	17	19	2	1	4	45	10	–	1	4	1	–	–	12	216	11	5	14	319.00	55.00	129.10	503.10	–
Norfolk	2,859	1,012	818	260	72	160	2,727	410	13	22	65	110	7	7	1,229	13,030	824	618	818	18,552.78	4,110.00	10,914.51	33,577.29	57
Plymouth	1,532	700	430	100	26	59	988	307	9	9	24	39	7	7	414	5,614	538	487	98	8,627.00	2,690.00	3,382.75	14,699.75	10
Suffolk	5,850	2,416	1,102	499	157	228	4,810	621	48	30	81	270	13	38	6,358	28,405	2,572	1,952	3,221	35,485.00	12,820.00	18,303.75	66,608.75	1,477
Worcester	3,623	1,488	833	421	107	147	1,703	592	28	10	70	182	12	4	2,649	11,941	1,435	1,018	390	16,809.00	7,175.00	7,423.95	31,407.95	87

Report of the Commission which Resulted in St. 1948 Chapter 310 for the Prevention of Child Delinquency

Editorial Note

Hon. Joseph Story, then associate justice of the Supreme Court of the United States, writing in 1820 in the "North American Review" (Vol. 11, p. 160) called attention to a forgotten report of a legislative committee of 1808 recommending the establishment of a court of equity and pointed out the need of preserving legislative documents from loss or destruction in order that "the next generation would not be in utter and irretrievable ignorance of our domestic legislative history, full of instruction, as it must be, both as to what we ought to avoid, and what we ought to cherish."

Since that time a better system of preserving such documents developed, but extra copies of many important reports since 1820 were not preserved, even in law libraries. This is particularly true of documents relating to the history of our courts. The only known printed copy in the state of the report of the legislative committee on the judicial system of 1798 is (or was in 1917) in the Boston Public Library. The report of the commission on the Practice act of 1851 was reprinted in bound form in (Hall's Mass. Practice); but the report of the commissions, of 1859 for the establishment of the Superior Court, of 1876 relative to the judicial system, of 1899 for the simplification of criminal pleading, and other similar reports are rare and, even when found in law libraries, are forgotten or unknown because they were never called to the attention of most of the bench and bar, either at the time of their appearance, or in later generations. It was to counteract, so far as practicable, this accumulating professional ignorance of legal history that the practice was adopted many years ago, following out the suggestion of Judge Story, of securing from the state printer reprints of reports filed at the State House in regard to the courts, and binding them up in the Massachusetts Law Quarterly so that the bench and bar might be notified of their existence and have them at hand for convenient reading, or reference, in connection with problems arising in, or out of, court in practice. Legal history, frequently, has a more direct bearing on current practice than is commonly realized by those who do not examine the history of statutes under which they practice.

Much of the forgotten history thus preserved may be found in the volumes of the Massachusetts Law Quarterly since 1915. A consolidated index of the thirty-three volumes is in preparation and will be issued in the near future.

The latest legislative report of this character to appear was the basis of chapter 310 of the acts of 1948 providing for the much discussed system of youth correction, as distinguished from the more familiar traditional punitive methods. We reprint it for convenient current and future examination and reference. This report was supplemented by Mr. Ellingston's book "Protecting our Children from Criminal Careers", which appeared last June, shortly after the passage of chap. 310. A brief notice of that book appeared in the "Quarterly" for October 1948, p. 83.

Federal Constitution—Further Opposition to a Proposed Amendment

(Supplementing Discussion in "Quarterly" for Oct. 1948 p. 51)

January 17, 1949

To the Members of the House of Delegates of the American Bar Association

I have received the advance sheets of the address of former Justice Roberts, under the heading "Now Is the Time—Fortifying the Supreme Court's Independence", which is to appear in the American Bar Association Journal for January and which has been sent as I understand it, to all the members of the House. In this address he supports the proposed amendment relating to the jurisdiction of the Supreme Court, which was defeated at the Seattle meeting and which is now opposed by a majority of the committee on jurisprudence and law reform in the second report requested by the House, copies of which you will receive at the first meeting of the House in Chicago. Please read it. As the address of Justice Roberts has been circulated before the meeting, I think something on the other side should be so circulated..

I appreciate with the greatest respect the views expressed by Justice Roberts and his strong feeling for the future of the Court of which he was a distinguished member. I regret that I am

obliged to oppose his views as to the suggested amendment. In a memorandum sent to the members of the House last August before the Seattle meeting, I stated that I considered this question one of the gravest matters that has ever come before the House. The second report of the committee to which I have referred was filed before the circulation of the address of Mr. Justice Roberts and without the knowledge that it was to be circulated or printed in the Journal. As a member of the majority of the committee opposing the amendment who has always had, as a member of the bar, as strong a belief in the court as an institution, and as strong a desire to protect it and the American doctrine of constitutional law which it represents, as any member of the Court could have, and because I disagree fundamentally with the judgment of Mr. Justice Roberts as to the wisdom of proposing the amendment, I submit the following suggestions for the consideration of the House.

As time has not permitted the submission of this memorandum to the other members of the committee, it must be understood to be a personal statement by me, for what it is worth, in support of the report of the majority of the committee.

Justice Roberts says in the address, "For some reason or other this proposal has met with more opposition than the others. In my opinion, without it you have made a bucket and left a hole through which the bucket can empty itself. In other words, this carefully envisaged plan to protect the judiciary would be left with a defect which renders the protective measures futile."

The "bucket" to which he refers was "made" in 1787-8, by some pretty wise foresighted men and ratified by a still larger body of men, many of whom were also wise in the various state conventions and some of them, perhaps, even wiser than some of the members of the Philadelphia convention. The "bucket" which they "made" has held the water of Constitutional law since 1789 on a rough road with very slight leaks, or, perhaps, more accurately, sloppings over, in the form of the McCardle case in 1868, and the emergency court on price controls during the recent war. The contents of the "bucket" has been considered as the American contribution to the science of government, and it is extraordinary that the "bucket" has held so much so long. The real reason for this is not the mere words on paper, but the sustained public sentiment of the people of the United States and of the states

in support of the doctrine of constitutional law. As Mr. Louis Wyman, state delegate from New Hampshire, writes me "in my judgment the basic spirit and sound sense of our American people constitutes the bottom of the bucket".

We are dealing with the intangibles of the American spirit—the broad base of our government—which I submit is not adequately described as "a bucket". As I pointed out in my memorandum last summer, popular catch words and political slogans are common among critics and students of the court such as "government by the judiciary" and "judicial supremacy". In forming a judgment about intangibles we should remember that, in that field of character and independent thought the strongest man is the just defenseless man and the strongest court to gain and hold respect, is a defenseless court of independent judges. This proposal which its supporters think would "protect the judiciary" would not, in my judgment, protect it, but would invite and stimulate misunderstanding and weaken the public respect for, and confidence in, all courts as well as in the judgment of the American Bar Association and, in what remains, of our doctrine of constitutional law.

With the greatest respect for the sincere and public spirited judgment of former Justice Roberts and of my brethern who agree with him, I submit that they are mistaken.

More than a century ago Macaulay predicted some of our problems of today. In a remarkable address before this association in 1923 Lord Birkenhead, forseeing present problems, compared the English Parlimentary Supremacy with the American Constitutional system. He expressed profound belief in the common sense and fundamental sanity of his people in almost the same words used by Brother Wyman as to the American people and added "the future of the world is incalculable. It is premature to decide whether America or Britain has been right."

I believe America has been right for Americans, but public respect for law is a delicate matter today; it can be disturbed and diminished by lawyers. Don't rock the boat!

Frank W. Grinnell
State Delegate for Massachusetts

SENATE . . . . No. 470

The Commonwealth of Massachusetts

REPORT OF THE SPECIAL COMMISSION ESTABLISHED TO MAKE A FURTHER INVESTIGATION AND STUDY RELATIVE TO THE PREVENTION OF CHILD DELINQUENCY.

JANUARY 20, 1948.

To the Honorable Senate and House of Representatives.

The special unpaid Commission, established for the purpose of making a further investigation and study relative to the prevention of child delinquency, the rehabilitation of delinquent children and as to the advisability of establishing institutions for the treatment of such children, hereby submits the following report.

RESOLVE OF AUTHORIZATION.

CHAPTER 71.

RESOLVE PROVIDING FOR A FURTHER INVESTIGATION AND STUDY RELATIVE TO THE PREVENTION OF CHILD DELINQUENCY, THE REHABILITATION OF DELINQUENT CHILDREN AND AS TO THE ADVISABILITY OF ESTABLISHING INSTITUTIONS FOR THE TREATMENT OF SUCH CHILDREN.

Resolved, That an unpaid special commission, to consist of two members of the senate to be designated by the president thereof, three members of the house of representatives to be designated by the speaker thereof, and five persons to be appointed by the governor, is hereby established for the purpose of making a further investigation and study relative to the prevention of child delinquency, the rehabilitation of delinquent children and as to the advisability of establishing institutions for the treatment of such children. The

commission shall, in the course of its investigation and study, consider the subject matter of current house document numbered fifty-six, relative to authorizing the trustees of Massachusetts training schools to establish, maintain and supervise a reception center for the classification and treatment of delinquent children. The commission shall be provided with quarters in the state house or elsewhere, may hold hearings, may require by summons the attendance and testimony of witnesses and the production of books and papers, and may expend for clerical and other services and expenses such sums as may be appropriated therefor. Said commission shall report to the general court the results of its investigation and study hereunder, and its recommendations, together with drafts of legislation necessary to carry such recommendations into effect, by filing one or more reports with the clerk of the senate at such time or times as the commission may elect; provided, that the commission shall so file its final report on or before the first Wednesday of December in the current year. *Approved June 28, 1947.*

A supplementary resolve, chapter 75, approved on the same day, enlarged the subject matter assigned to the Commission by referring to it a proposal to raise from seventeen to eighteen the age limit at which children come under the jurisdiction of the juvenile court.

Summary of Activities.

Organized on September 9, 1947, the Commission held hearings and meetings at least once a week and sometimes more frequently for a total in excess of twenty. One of these meetings was a public hearing. In a number of executive sessions the Commission listened to the views and recommendations of leading psychiatrists, experts in the fields of child guidance and welfare, sociologists, district judges, juvenile court judges, probation officers, religious leaders, administrators of correctional institutions, a representative of the trustees of the Massachusetts training schools, attorneys, and representatives of national organizations in the field of delinquency control. In addition, members of the Commission visited the three Massachusetts training schools, namely, the Industrial School for Boys at Shirley, the Lyman School for Boys, and the Industrial School for Girls at Lancaster, as well

as three county training schools in Middlesex, Worcester and Hampden counties. Finally, two members of the Commission consulted with the National Probation Association in New York.

There is no Panacea.

As a result of these hearings and investigations, the Commission has come to certain definite conclusions, — first, that there is no short cut to control and no cure-all for delinquency. The past century has seen emerge a stream of new agencies and procedures for the control of delinquency — industrial schools, probation, parole, juvenile courts, diagnostic clinics, family welfare agencies, settlement houses, boys' clubs, Big Brother movements, to mention only a few. Yet, indispensable as each of these efforts has proved, our prison population has grown seven times as fast as our national population and the penitentiaries fill up with repeaters who started as delinquent children. Growing public concern reflects our double failure to protect children from criminal careers and adequately to protect society from delinquency and crime. We are forced to recognize that piecemeal measures or such individual procedures as those listed above, no matter how desirable each may be, are not of themselves good enough.

The job of cutting down the army of delinquents and potential criminals calls for action on a front almost as broad as society itself; also, the separate phases of the action need to be related to each other, fitted into an overall strategy. The effectiveness of such agencies and measures as those mentioned depends upon team work and upon intelligent leadership based on a view of the whole problem. The duty of providing intelligent leadership falls logically on the State. Accordingly, the first recommendation of the Commission is the creation of an agency to be called the Youth Service Board that will serve as General Headquarters of the state-wide effort to control delinquency. The Board is to consist of three

full-time members, whose major activities will be described in the following pages. The proposed legislation to establish the Board and to define its powers and duties will be found in Appendix A, preceded by an explanatory analysis.

To reach the broad goal of effective control of delinquency, the Board must necessarily take specific action, sector by sector, and a step at a time. The rescue of children who have already become delinquent constitutes one front. It involves detection, arrest, detention, trial, disposition, treatment — including probation, foster home placement, institutionalization, parole and supervision in the community. For the great majority of child offenders, most of these steps take place locally. A small number of the most seriously delinquent are committed to the State after the court finds the child delinquent or guilty. This points to the sector in which action by the Youth Service Board can be most effective immediately and at least cost. It is in improving our methods of handling these more seriously delinquent children committed to the State that we rehabilitate a larger proportion and prevent them from going on to criminal careers.

Correction at the State Level.

The mandate of this Commission, as well as the report of its predecessor to the General Court in 1947, reveal the Commission's responsibility for this aspect of the problem. That report (Senate, No. 485) describes the Massachusetts training schools as "juvenile prisons" and has some harsh things to say about the physical equipment, educational programs and dangerously mixed populations of these schools. The investigations of the present Commission have confirmed these findings. In terms of the demoralizing effect upon the children lodged in them, this Commission believes that these schools are a disgrace to the Commonwealth.

It is unfair to seek to make scapegoats of the trustees for this situation. Without doubt the present Board is

composed of men and women as capable as could be found in the Commonwealth. With the best intentions in the world an unpaid, part-time board is severely limited in what it can do under the impossible conditions of indiscriminate commitment to the schools and under the substandard salary schedules which the existing correctional system imposes.

From the point of view of the court the possibilities of treatment are limited to probation, commitment to the Department of Public Welfare, or commitment to the training schools. For many children who require extensive re-training, probation is completely unsatisfactory and only adds to their irresponsible attitude toward society. The commitment of such children to the mass custody training schools, with their routine systems of parole, merely educates them in crime. This is evidenced by the fact that far too many graduates of the training schools are eventually committed to the reformatories for more serious offences.

In view of these facts the Commission has reached the conclusion that more effective rehabilitation of delinquent children and the consequent better protection of the public lies not in superficial changes in the schools, but in reorientation and reorganization of the whole system. This the Commission proposes to bring about through the Youth Service Board.

The purpose of the proposed correctional system is to save delinquent children. Thereby we shall most effectively protect society. The best modern experience demonstrates that the great majority of delinquent children can be reclaimed. A small percentage, because of mental or emotional abnormality, will remain physically dangerous to society. This small number should be segregated and treated constructively, with full protection of their rights, as long as they remain dangerous.

Reclamation or correction of delinquent children calls for continuity of treatment of each child as an individual human being. Consequently, the new system provides that the courts shall commit delinquent children who

need state care to the Youth Service Board rather than to a particular institution. The Board will have complete control over the child through all the steps from commitment to final replacement in society. These steps fall into three major divisions:

1. Diagnosis, — physical, mental, emotional and social, — to determine, if possible, why a child is delinquent, and the treatment to which he is most likely to respond successfully.
2. Treatment and training indicated by the diagnosis.
3. Re-establishment in the community.

Diagnosis.

As a first step the Youth Service Board must make a thorough study of each child committed. This can be accomplished by organizing a reception cottage or unit in each existing institution where the newcomers are kept completely separate from the inmates during the period of study. Or it can be done by transforming some existing facility into a separate reception and diagnostic center to which all committed children, boys and girls, can be sent for a period of study and observation lasting from four to eight weeks. The one thing indispensable to adequate diagnosis is a team made up of a pediatrician, psychiatrist, psychologist, and social investigator, plus competent teachers and supervisors now available in the schools to keep the children occupied and to observe their behavior while they are under study. The first job of this team is to identify and to screen out the child who is delinquent because he is lame or nearly blind or incapable of academic school work, or one of the many other types who require not institutionalization but special medical, psychiatric or social care. The Commission found many such children, as well as feeble-minded and psychotic children, now lumped in the training schools with other children. The second job of the diagnostic team is to identify the particular personality defects, assets and needs of the children who do require institutionalization.

Treatment and Training.

Obviously it does little good to make a thorough study of delinquent children unless the findings are used to guide treatment. The fatal defect of the training schools is that they are mass-custody institutions in which are lumped first offenders and habitual offenders, sexual deviates with children who are merely truants from impossible school situations, the sick and defective with the well, near feeble-minded with the brilliant psychotic type of individuals, the dangerous with the trustworthy. It is this lumping together that does so much to make professional criminals of so many inmates of industrial schools. As indicated above, the Youth Service Board, with the aid of its diagnostic team, must screen out the physically sick and get them in hospitals, the feeble-minded, psychotic, and more hopeless sexual deviates and get them transferred to the Department of Mental Health, and the children who would be better off in foster homes or private institutions, and so place them. At the same time, the Board must reorganize the three existing training schools and any other institutions that may be turned over to the Board into an integrated system, with each unit caring for types that require similar treatment. The transformation of a traditional mass-custody training school into a healthy social community that can effectively change unacceptable habits is an extremely difficult and slow process, but the method described herein seems to the Commission to be the only logical way to effect that transformation. The tools are classification and segregation, adequate personnel and constructive programs.

Re-establishment in the Community.

The third step in proper handling of delinquent children is successful re-establishment in the community. If that is not done, all the preceding steps will be wasted. The supervising or parole officer must co-operate with the diagnostic and treatment staffs and must be in touch

with the child from the time he is committed. The parole officer serves as the link between the child and his community. During his absence, the officer must prepare the home and neighborhood situation to receive him when he is ready for release. Successful replacement in the community, of course, depends as much upon the community as upon the child and requires the co-operation of the family, the school, the neighbors, the play groups and employers.

A New Tool for the Courts.

It should be emphasized that the proposed reorganization of the State's correctional system for children in no way takes powers from the courts nor competes with the courts. Rather, the Youth Service Board provides a new tool for the courts to enable them to do a better job of reclaiming children and of protecting the public. The Board must co-operate closely with the judges and probation officers both in the selection of children committed and in the replacement of children in the community.

No New Powers Granted.

Likewise, it must be emphasized that the plan grants no powers to the Board that are not already possessed by the trustees and the Division of Juvenile Training. In fact, it abolishes some of the powers now possessed by the trustees, such as the power to transfer boys and girls from the training schools to the reformatories. What the plan does is to define sharply existing powers, increase responsibilities, such as the responsibility to make a thorough diagnosis of each child, and fix these powers and responsibilities clearly in the proposed Board.

Correction and Prevention at the Local Level.

Extensive as is the task of transforming the state correctional system for juveniles into a truly rehabilitative agency, it constitutes but a small part of the total

program. There remains the far larger task of improving all the correctional services — police, detention, courts, probation, case work, and so on — at the community level and in *every* community. And there remains also the major and even larger job of prevention. To make a constructive recommendation in this field was the major responsibility imposed upon the Commission.

Juvenile delinquency and youth crime are not just manifestations of the evil will of particular youngsters. Rather, they are symptoms of the sickness of our society. The truant usually is running away from the failure of the school to meet his capacities and his emotional needs; the gangster is trained for his career of killing in the slums. Obviously we must do a better job of handling the truant and embryo gangster in order to keep them from becoming increasingly dangerous to society. But that is like the responsibility of medicine in dealing with victims of typhoid fever. At the same time it is curing the patients it must do everything possible to remove the contamination from the water and milk supply to prevent typhoid. So we must take action to remove the social and psychological causes of delinquency and crime.

Varied Causes of Delinquency.

Any complicated and tough social problem creates a tendency to over-simplify and to look for someone to blame. A recent Wisconsin study of the causes of delinquency brought out the following partial list of factors: homes broken by death or divorce or working mothers; the indifference and irresponsibility of some parents; the bad examples set by drunken, immoral or criminal parents; poverty; poor housing and blighted neighborhoods; forcing all school children to learn the same sets of facts without regard to their differences in capacity or interests; lack of vocational training in the schools; lack of guidance and welfare services in the schools; inflexible compulsory attendance laws; the lack of religious and moral instruction; the lack of recreational opportunities to absorb

the leisure time of children; war-time high wages followed by fewer work opportunities and inadequate protection of working children; salacious moving pictures and magazines and crime-encouraging radio programs; too many taverns and sale of liquor to minors; unsupervised dance halls and other places of commercial recreation; the automobile; insufficiency of child welfare and family welfare services; lack of guidance clinics for the study and treatment of children with problems either before or after they get in trouble with the law; not enough police officers trained to handle children; not enough probation officers; lack of suitable facilities for detention of children; and failure to train children for marriage and parenthood. Many other factors were mentioned, but the foregoing will illustrate the range and variety.

In view of this multitude of causes, it seems foolish to look for someone to blame for delinquency. It seems equally futile to concentrate on any one cause or any one solution and to imagine that thereby we will do much to control delinquency. The variety of contributing factors seems to reflect the tremendous changes in our society brought about by our modern civilization. We have to face the fact that we really live in a new world of speed and power and universal interdependence while our social organization and social services remain largely of the old self-sufficient rural society which has gone.

Not many years ago, for instance, the control of child behavior was regarded as exclusively the province of the home and the church. People resented the "outside interference" of welfare and social workers. However, those ideas and attitudes have changed and we know that the home is no longer a self-sufficient unit able to satisfy all the emotional, educational, social, recreational and economic needs of children. We have to recognize that the family and the child depend upon the community as never before. The basic problem, therefore, is to strengthen the services of the community to all children.

Past Experience in Massachusetts.

Massachusetts has been fully conscious of this necessity. During the war the Massachusetts Committee on Youth Guidance devoted its major effort to helping communities strengthen their services to all children, including law enforcement services, educational, health, welfare and recreational services. Carrying on this tradition, the Commission proposes to impose on the Youth Service Board the duty to provide advice and assistance in the prevention and control of delinquency to any community desiring it. Experience in several States, as well as in Massachusetts, has developed effective and inexpensive procedures for giving such assistance to communities.

The Survey Team.

One such procedure which the Commission believes applicable in Massachusetts, and which could well be operated by the Youth Service Board, involves the organization of a survey team, including specialists in police work with children, in probation, in school guidance and attendance problems, in recreation, in social work and in community organization for co-ordination of efforts and agencies.

At the invitation of county commissioners, mayors, city councils, judges of juvenile court sessions, school officials, and other agencies, public and private, serving youth, the Youth Service Board would send the survey team into a county or municipality. The team would aid the local authorities and agencies to make a self-examination of their services to youth.

It would help the school, the police, the probation department, and the recreational agencies to see where they might be failing in their efforts to prevent delinquency. It would show how the methods of each agency could be improved to serve better the individual needs of each child. It would demonstrate to the police how

their success with children depends on close co-operation with the school, with social work agencies, with recreational agencies and *vice versa*. The Commission believes that this inexpensive survey technique would open the door to improvements that are long overdue.

The Advisory Committee.

The proposal for a Youth Service Board recognizes clearly that only the communities can do the actual job of delinquency control and of giving effective service to all youth. Moreover, these tasks require the full support and participation of the public. The public must have confidence in the Board and must have a liaison with the Board through which to channel support and constructive criticism. To provide such a liaison, the act calls for the establishment of an advisory committee on service to youth, to consist of fifteen leading representative citizens appointed by the Governor. This committee has no administrative responsibilities to bog it down, but will have great influence through its power to focus public and legislative attention on the major problems and needs of youth throughout the Commonwealth.

Need for a Three-member Board.

It may be asked why a Youth Service Board of three members is necessary, why one good administrator cannot do the job? Experience with this plan has demonstrated that a single administrator is so burdened with administrative duties that he is bound to lose sight of the rights and needs of the individual children. Without the three-member quasi-judicial Board to keep over-all control of each child and make all the major decisions on placement, transfer, conditional release and discharge, each procedure tends to become routine and the interests of the child are lost sight of in the interests of the staffs — the diagnostic clinic, the separate institutions and the parole officers. Moreover, in a State the size and population of Massachusetts, particular responsibility for setting up

and supervising the diagnostic services might well be assigned to one member of the Board, for supervision of training and treatment program to another, and for supervision of the parole service to the third, in addition, of course, to their joint quasi-judicial duties.

Method of Selection.

The foregoing considerations emphasize the necessity of selecting as Board members persons of the highest personal and professional qualifications. The proposed method of appointment and salaries are intended to insure them independence and prestige. It is proposed that the Governor shall appoint two members from candidates nominated by the advisory committee of fifteen leading citizens, and that he be empowered, in his discretion, to appoint the third member from candidates recommended to him jointly by the chief justice of the Supreme Judicial Court, the chief justice of the Superior Court, and the chairman of the administrative committee of the district courts.

Endorsement by Commission on Sex Crimes.

In its search for ways and means of protecting the public against sex crimes, the Special Commission Studying Prevalence of Sex Crimes has reached the conclusion that the proposed Youth Service Board, with its powers and duties in the twin fields of correction and prevention, offers the most promising long-range program for the reduction and prevention of sex crimes, as well as other crimes, by children and adolescents. The members of the Special Commission Studying Prevalence of Sex Crimes have in the following letter to the Commission unanimously endorsed the legislation to create a Youth Service Board.

January 14, 1948.

Honorable J. Elmer Callahan, *Chairman, Special Commission on Child Delinquency.*

Dear Senator Callahan: — As members of the Special Commission Studying Prevalence of Sex Crimes, the undersigned take this means of associating themselves with your Commission in support

of your proposed legislation to create a Youth Service Board for Massachusetts. We do this in the belief that the proposed Board offers the most realistic and promising tool for the identification and treatment of potentially dangerous sex offenders among juveniles, and also that it offers the only practical means brought to our attention of aiding communities to improve their services to all youth so that eventually the maladjusted child can be recognized and helped in time to forestall the development of a sexually psychopathic personality or deviate.

We have come to see that accurate identification of the dangerous sexual deviate before he has committed an atrocious crime constitutes the core of the problem submitted to us. On such identification depends effective protection of the public. On it, also, depends effective protection of human rights and of the liberty of individuals. To take away the liberty of a boy or man and to brand him as a "sexual deviate," if there is no atrocious crime to give indisputable proof of the justice of such action, impose a responsibility that no government dedicated to the protection of freedom can lightly shoulder. Consequently, we look with particular favor on the type of thorough examination and diagnosis which the proposed Youth Service Board must give and on the conditions controlling the diagnosis.

In the first place, any child in the care of the Board will already have committed some offence justifying state intervention. In the second place, the diagnosis will be far more than an interview by a psychiatrist, however competent, or than a physical, mental and social check-up by a guidance center. In addition to exhaustive examination, the Board's diagnosis will, as we understand it, include continuous close observation by trained people of each child in all aspects of his behavior and relations with others over several weeks. It seems inevitable that such a study will produce a truer picture of a child's personality and of his deep-seated maladjustments and a more reliable prognosis as to his probable behavior than any type of diagnosis now available in Massachusetts.

Further, once the Board has discovered in any of its wards sexual tendencies that might make him dangerous to society, it would apparently have the staff and the program to treat him constructively, with some hope of correcting his maladjustment. If this failed, as a last resort the Board would have the evidence to justify an application to the proper court to find the person a sexual deviate under chapter 123A of the General Laws, so that he could be transferred to the Department of Mental Health for indefinite segregation.

The foregoing procedure would appear to offer adequate protection of human rights and at the same time to protect society against those juvenile offenders, like the Coombes boy, who come under the control of any state agency before they commit an atrocious sex crime. It is true that a number of sex criminals, both juvenile and adult, have not come to the attention of the law before committing their

murderous attacks. As a result of its investigations, however, the Commission believes that such offenders must have been deeply maladjusted individuals whose developing abnormalities could have been spotted by trained observers. The time for such identification of personality disorders is during childhood, when there is greatest hope of correcting them; and the place is the school, where the community first comes in regular contact with every child. We believe that trained personnel in every school system making annual physical, mental, emotional and social examinations of every child, keeping cumulative records, and instructing teachers to observe and interpret behavior, would discover the disorders that need treatment, and would find a means of seeing that the required treatment is provided. Such a system, to our mind, would constitute the most effective preventive of the serious sexual disorders that lead to atrocious crimes.

The problem has been how to aid all school systems to develop such service to all pupils. We believe that in establishing the proposed Youth Service Board as the state headquarters for the control of delinquency, with responsibility to extend assistance and advice to all communities in the strengthening of their services to all youth, your Commission has hit upon the procedure needed.

As a major contribution to the protection of the public from sex crimes, the Youth Service Board should, in the opinion of the members of the Special Commission Studying Prevalence of Sex Crimes, be created without loss of time.

Signed Sen. PHILIP K. ALLEN, *Chairman.*
Rep. ALLAN R. KINGSTON.
Rep. J. ALAN HODDER.
Rep. ROBERT F. MURPHY.
Dr. A. WARREN STEARNS.
Dr. GEORGE GARDNER.
Mr. JOHN L. SULLIVAN.

COUNTY TRAINING SCHOOLS.

The Commission believes that the creation of the Youth Service Board by the passage of the legislation presented in Appendix A represents the first and most important step to be taken towards the control of delinquency in Massachusetts. However, the Commission has given attention to other proposals. Visits to three county training schools and other evidence submitted convinced the Commission that these schools are inefficient and no longer serve the purpose for which they were intended in the institutional treatment of children

in Massachusetts. This is borne out by the steady decrease in their populations to the point that some of them now take care of less than a third of their capacity. It is also supported by the judgment of numerous commissions that have investigated these schools over the last thirty years and have recommended their abolition. (See House, No. 1181 of 1918; House, No. 1403 of 1919; Senate, No. 280 of 1922; House, No. 230 of 1933; and House, No. 2123 of 1939.) The Commission therefore recommends their abolition in accordance with a bill in Appendix B.

Truancy and School Offenders.

The Commission recognizes that more intelligent handling of truants and school offenders is indispensable to effective control of delinquency. Influences that contribute to chronic truancy, which in turn may develop into more serious kinds of delinquent behavior, may lie in the school situation, in unsatisfactory teacher-pupil relationships, in curricular maladjustments. They may lie in the child himself or they may lie in the home, in lax parental supervision, in anti-social attitudes or ignorance on the part of the parents. Whatever the contributing factors, they must be discovered and removed if the truancy and its attendant delinquency are to be corrected or prevented. That is a problem of administration within the schools, and calls especially for highly trained attendance officers. To assist the schools in this area, the Commission provides in Appendix C that the State Department of Education shall set standards for school attendance officers.

Those truants and school offenders who require more extensive treatment than the local community can give should receive the same thorough diagnosis and subsequent handling which the Commission is recommending for children found delinquent for other offences. The present laws, drawn long ago, reflect an outmoded concept which does not allow for this more modern and reasonable treatment. Therefore the legislation in

Appendix C provides that when a commitment is necessary such commitment shall be to the Youth Service Board instead of the county training schools. But in order to conform with the laws on school attendance, a child so committed must be discharged not later than his sixteenth birthday.

Further Study.

Among other proposals considered by the Commission was one submitted at its request by the National Probation Association for the complete recodification and consolidation of all the present statutes affecting neglected, wayward, delinquent and truant children.

Two members of the Commission traveled to New York and conferred all day with the Association. On another occasion, representatives of the Association attended an all-day hearing at the State House. The Association has spent much time drafting a suggested recodification in accordance with the conclusions of this Commission. Parts of their recommendations are incorporated in the bill submitted in Appendix A. The Commission endorses the principles set forth in the Association's proposals. Many of their proposals are contingent on the passage of the bill set forth in Appendix A. Accordingly, this Commission feels that any recommendation concerning such recodification should await the passage of said bill.

The Commission has necessarily put its emphasis upon the effort to rescue the child already delinquent and committed to the State. Consideration of other matters set forth in the N. P. A. proposals, as well as of several subjects assigned to the Commission to which it has not had time to give sufficient attention, leads us to recommend the continuation of the Commission, which we have done in Appendix D. While we have not submitted legislation on all phases, we have accumulated extensive material and information, eliminated much superfluous data, and had much personal experience in the field which will enable the members of this Commission, if continued, to proceed with greater efficiency.

Conclusion.

The Commission cannot emphasize too strongly the urgent need for a more rational correctional system for children in Massachusetts at the state level. A first-hand study would convince all citizens, as it has all members of this Commission, that the present system is doing many children more harm than good, and that a fundamental reorganization is long overdue.

Sen. J. ELMER CALLAHAN,
Senate Chairman.
Rep. HENRY D. WINSLOW,
House Chairman.

Sen. PHILIP K. ALLEN.
Rep. STEPHEN L. FRENCH.
Rep. WILLIAM X. WALL.
FRANCIS J. DALY.
MARIE W. HAZEN.
LYMAN V. RUTLEDGE.
JOHN M. KINGMAN.
FREDERICK ROSENHEIM.